

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO
Honolulu, Hawaii

January 4, 2016

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Kakaako Board Members:

SUBJECT:

Shall the Authority Authorize the Executive Director to Execute a Contract for Janitorial, Trash Collection, and Maintenance Services for Kakaako Waterfront, Gateway, Kolowalu and Kewalo Basin Parks For a Maximum Five (5) Year Period Using Funds From the Hawaii Community Development Authority Revolving Funds, Public Facility Dedication Subaccount?

SUMMARY:

The current contract for Park Janitorial, Trash Collection, and Maintenance Services will expire at the end of January 2017. Staff recommends the Board approve this request to ensure such essential services continue to be provided.

AUTHORITIES:

At the August 3, 2016 General Meeting, the Board indicated it would like to review and approve all procurement requests over \$25,000. The minutes to the August 3, 2016 Meeting are attached hereto as Exhibit A.

BACKGROUND:

Kakaako Waterfront Park, Gateway Park, and Kewalo Basin Park comprise approximately forty-one (41) acres in the Kakaako Community Development District and were completed in 1990, 1992, and 1998, respectively. The 2.3 acre Kolowalu Park was built in 2010.

Janitorial, trash collection, and maintenance services for these parks are currently performed by the Next Step Shelter's Jobs Training Program. The Hawaii Community Development Authority (HCDA) and the Department of Human Services (DHS) instituted the Jobs Training Program in 2009 under an Emergency Proclamation by Governor Linda Lingle. This Program will end on February 1, 2017, when the DHS contracts with a new operator of the Next Step Shelter.

The HCDA is currently conducting an Invitation For Bids (IFB) for a janitorial, trash collection, and maintenance services contract on the State Electronic Procurement System (HiePRO) with bids due on January 17, 2017. The IFB will be for a three (3) year term with two (2) additional one (1) year extensions, with service to commence on February 1, 2017. A copy of the IFB is attached hereto as Exhibit B. The scope of services under this solicitation includes:

- a) Open all comfort stations and secure doors daily.
- b) Lock all comfort stations upon park closure nightly.
- c) Empty all trash cans by 2:00 p.m. daily.
- d) Clean and line refuse containers daily. Trash shall be placed in designated park dumpsters.
- e) Sweep, scrub, wet mop, and disinfect all restroom surfaces including floors, seats, walls, ledges, and floor drains twice a day.
- f) Clean, remove stains, scrub, and disinfect all restroom fixtures including basins, toilets, urinals and drains twice a day.
- g) Remove algae, debris, and buildup from outdoor shower area once a week.
- h) Remove smudges, graffiti, and markings from interior walls and doors as needed.
- i) Clean and wipe drinking fountains twice a day.
- j) Replenish supplies in restroom dispensers twice a day.
- k) Perform general maintenance and additional non-routine repairs as directed by the HCDA (e.g. restroom plumbing repairs, restroom electrical repairs, pothole repairs, and fence repairs).

The contract will include an allowance of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000) each year to fund maintenance and non-routine repairs as directed by the HCDA. Such expenditures will require pre-approval by the HCDA.

After bids close on January 17, 2017, HCDA staff will evaluate all bids and make an award to the lowest responsible and responsive bidder. The award must be made prior to the termination of the existing contract on February 1, 2017 to ensure there is no lapse in services.

ANALYSIS:

Due to the scope of this contract, the bids are expected to exceed the \$25,000 procurement threshold that can be administratively approved.

RECOMMENDATION:

HCDA recommends approval to authorize the Executive Director to execute a contract for janitorial, trash collection, and maintenance services for Kakaako Waterfront, Gateway, Kolowalu and Kewalo Basin Parks for a maximum five year period using funds from the Hawaii Community Development Authority Revolving Funds, Public Facility Dedication Subaccount.

Respectfully submitted,

Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:

Jesse K. Souki, Executive Director
Hawaii Community Development Authority

Attachments

Attachment A - Minutes of the August 3, 2016 General Meeting

Attachment B - Invitation for Bid (IFB 01-2017) for Janitorial, Trash Collection, and Maintenance Services for Kakaako Waterfront, Gateway, Kolowalu and Kewalo Basin Parks

Minutes of a Regular Meeting
of the Members of the
Hawaii Community Development Authority
State of Hawaii

Wednesday, August 3, 2016

GENERAL BUSINESS

I. CALL TO ORDER/ROLL CALL

A general business meeting of the Members of the Hawaii Community Development Authority (“Authority” or “HCDA”), a body corporate and a public instrumentality of the State of Hawaii, was called to order by Chair Whalen at 10:00 AM August 3, 2016 at Authority’s principal offices at 547 Queen Street in Honolulu, Hawaii, 96813, pursuant to Article IV, Section 1 of the Authority’s Bylaws.

Members Present: Beau Bassett
Donna Camvel
Wei Fang
Michael Golojuch, Sr.
Scott Kami
Jason Okuhama
David Rodriguez
Shirley Swinney
Mary Pat Waterhouse
Steven Scott
John Whalen

Members Absent: George Atta
William Oh
Amy Luersen
Kalani Capelouto
Derek Kimura

Others Present: Aedward Los Banos, Interim Executive Director & ASO
Mike Wong, Deputy Attorney General
Lori Sunakoda, Deputy Attorney General
Diane Taira, Deputy Attorney General
Deepak Neupane, Planning Director
Lindsey Doi, Asset Manager
Laura Savo, Court Reporter
Shelby Hoota, Media Specialist

II. APPROVAL OF MINUTES

General Regular Meeting of June 1, 2016.

No comments or corrections were made. Minutes were approved as presented.

1. General Regular Meeting of July 6, 2016.

No comments or corrections were made. Minutes were approved as presented.

REPORT OF THE EXECUTIVE DIRECTOR

Interim Executive Director, Aedward Los Banos highlighted the following items:

The Kewalo Basin Harbor sewer repair is being worked on. The contractor identified the issue and will start on a permanent repair. The restrooms have reopened and the contractor will work to minimize any closures while the repair is in progress.

The 440 Keawe Street affordable rental project by Kamehameha Schools will possibly be occupied by the end of August.

Tenant improvements to the South Shore Market (section below TJ Maxx on Ward) will begin.

KALAELOA UPDATE

The Kalaeloa Legacy Foundation held its annual fundraiser.

Kiran Polk of Hunt Development continues to indicate its commitment to address and remove the stockpiles on the site. They are working with another construction company to haul the equipment and complete the removal of the stockpile.

A Micro-grid Project is being prospected in a joint project with the State Energy Office for the Kalaeloa Development District receiving federal support through the Federal Energy Office. Funds will be used to coordinate a workshop with stakeholders to develop parameters for a microgrid. There will be an informational presentation for the Kalaeloa members regarding the microgrid workshop from the State Energy Office at the next meeting in September.

A meeting with BRAC, HCDA and DHHL confirmed that BRAC would like the City to commit to accepting land parcels by the end of the 2016 calendar year. If the City does not agree to accept the parcels HCDA or DHHL may have the opportunity to acquire the Kalaeloa property.

Mr. Los Banos confirmed for Member Swinney that the micro grid workshop will be federally funded and Ms. Tesha Malama stated the logistics for the micro grid workshop are being coordinated and it may coincide simultaneous with the Kalaeloa Landowners Summit

in October.

There were no other questions/comments or discussion from the board members or the public.

III. BUSINESS MATTERS

2. Decision Making: Election of Officers Fiscal Year 2016 - 2017

Chair Whalen noted due to the lack of quorum at the board's July meeting, the Election of Officers, as required according to the bylaws were deferred to today's meeting.

There were no comments or questions from the board members or the public.

Chair Whalen opened the nominations for the respective officers of Chairperson, Vice Chairperson and Secretary.

Vice Chair Scott nominated John Whalen to continue as Chairperson. Member Golojuch seconded. Chair Whalen conducted a voice vote. All members approved with no abstentions.

Member Kami nominated Steven Scott as Vice Chair. Member Okuhama seconded. Chair Whalen conducted a voice vote. All members approved with no abstentions.

Member Golojuch nominated Shirley Swinney as Secretary. Member Steven Scott seconded. Chair Whalen conducted a voice vote. All members approved with no abstentions.

There were no comments or questions from the board members or the public.

3. Information and Discussion: Settlement Offer and Update Relating to Close Construction, Inc. vs. Hawaii Community Development Authority et al., vs. Mitsunaga & Associates, Inc. vs. DTRIC Insurance Company, Ltd.; Civil No. 14-1-0599-03.

Chair Whalen noted for the board that the Attorney General's office requested the information and discussion item be moved up, from # 7 as originally filed on the Agenda, and adjust the remaining order accordingly.

Due to the litigation, Member Swinney motioned for the board to convene in executive session pursuant to Hawaii Revised Statutes, Section 92-5 (a)(4). Member Bassett seconded the motion. All members unanimously approved entering into executive session.

Pursuant to Section 92-5 (a) (4), Hawaii Revised Statutes, the Authority convened in Executive Session at 10:25 a.m.

Chair Whalen reconvened the meeting at 10:54 a.m.

There was no further discussion from board members or public comments.

4. Information and Discussion: Executive Director Search Committee Update

Chair Whalen provided the update. He stated a few changes made to the position description included the addition of the He'eia Community Development District and also skill sets to work in developing the Kaka'ako Community. A revised final position description was disseminated to board members, and the contractor, Bishop and Company opened the application period for 60 days. The committee hopes to recruit and hire the Executive Director by November 2016.

There was no further discussion from board members or public comments.

5. Information and Discussion: 2017 HCDA Draft Legislative Package

Mr. Los Banos presented the report provided in the board packet. DBEDT is seeking preliminary budget requests from its divisions and agencies in preparation for the 2017 legislative session. HCDA's summary of budget item requests include:

- The Kalaeloa Enterprise Energy Corridor
- Lot C project parking structure
- American Brewery Building remaining repairs
- Kewalo Basin Fisherman's Wharf bulkhead repair
- HCDA staff salaries
- Kakaako conveyance of roads and other remnant parcels

Chair Whalen noted as the agenda item is just preliminary information for DBEDT's budget request, the board will have an opportunity for a discussion at a later date once DBEDT's budget request is submitted to the legislature.

Mr. Los Banos and Mr. Neupane clarified for board members that the HCDA will not be requesting the legislature to fund an EIS for He'eia this year as the Office of Planning is conducting a NEPA and feels a EIS is not necessary at this time.

PUBLIC TESTIMONY

Ms. Michelle Matson, President of the Oahu Island Parks Conservancy, asked where the planned location for the Lot C parking garage will be. Mr. Los Banos and Mr. Neupane stated the parking structure per the current master plan will be located along Forest Avenue and designed to be between 45 to a maximum of 65 feet high.

Ms. Matson suggested that HCDA look into adopting rules so that the 1st floor

community room in the American Brewery Building can be utilized by the public for community meetings.

Member Rodriguez asked if the revisions to the reserved housing rules require legislative approval or if the revisions can be completed internally. Chair Whalen confirmed the board has authority to make the revisions and the draft of the reserved housing rules and workforce housing rules will be presented at the HCDA Authority meeting in September.

There was no further discussion from board members or public comments.

6. **Information and Discussion: Proposed Delegation of Authority to HCDA Executive Director Involving Certain Procurement Matters.**

AND

7. **Information and Discussion: Proposed Delegation of Authority to HCDA Executive Director Involving Reserved Housing Matters.**

Mr. Los Banos gave a general overview of the report provided in the board packet and stated, agenda items 7 & 8 are generally decisions that historically have been decided by the board and in an effort to streamline the administrative process both reports are to delegate those decisions to the executive director. Any decisions made by the executive director regarding these matters will be reported in the Executive Director's report to the Authority at the next regularly scheduled board meeting. The following are recommendation decisions currently retained by the Board to be delegated to the Executive Director:

Administrative/Procurement Matters:

- Expenditure of non-discretionary costs renewal and execution of existing contracts for goods and services required to operate and maintain HCDA's park properties, offices and other assets.
- Emergency procurement of goods and services and
- Expenditure of HCDA Capital Improvement Projects earmarked funds appropriated by the Hawaii State Legislature pursuant to the Authority's request.

Reserved Housing Matters:

- Sale or Transfer After the Regulated Term
- Sale or Transfer During the Regulated Term
- Owner's Refinancing Request and Subordination of Shared Equity Interest

Member Scott stated, to keep the board informed, he'd like any requests over \$25K for procurement matters to be presented to the board for approval.

Mr. Los Banos confirmed for Member Waterhouse, if there are inadequate funds in the reserved housing subaccount and other funds available from another account, the item would be brought before the board for approval.

There was no further discussion from the board members or public comment.

IV. ADJOURNMENT

Chairperson Whalen adjourned the regular meeting at 11:52 a.m.

Respectfully submitted,

/s/

John Whalen,
Chair

Note: The transcript of this meeting contains a verbatim record and should be consulted if additional detail is desired.

ELECTRONIC INVITATION FOR BIDS

(IFB No. HCDA 01-2017)

TO FURNISH

**JANITORIAL, TRASH COLLECTION AND MAINTENANCE
SERVICES**

FOR

KAKAAKO MAUKA GATEWAY PARK,

KAKAAKO MAKAI GATEWAY PARK,

KAKAAKO WATERFRONT PARK,

KOLOWALU PARK, AND

KEWALO BASIN PARK

in

Honolulu, Hawaii, on the island of Oahu

For the

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

547 Queen Street

Honolulu, Hawaii 96813

APPROVED BY:

Jesse Souki
Executive Director of the
Hawaii Community Development Authority

Date: January 3, 2017

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SECTION ONE

INTRODUCTION AND SIGNIFICANT DATES

1.01 TERMS AND ACRONYMS USED HEREIN

AG008	=	103D General Conditions are identified as Form AG008 (rev. 4/15/09) <u>See</u> Attachment 4.
Bidder	=	Any individual, partnership, firm, corporation, joint venture, or other entity submitting directly or through a duly authorized representative or agent, a bid for the good, service, or construction contemplated
CA	=	Contract Administrator
Contractor	=	The Bidder awarded a contract under this Electronic Invitation for Bid
GET	=	General Excise Tax
HAR	=	Hawaii Administrative Rules
HCDA	=	Hawaii Community Development Authority, a body corporate and public instrumentality of the State of Hawaii
HRS	=	Hawaii Revised Statutes
IFB	=	Invitation for Bids
SPO	=	State Procurement Office of the State of Hawaii

1.02 INTRODUCTION

The Hawaii Community Development Authority ("HCDA"), a body corporate and public instrumentality of the State of Hawaii attached to the State of Hawaii's Department of Business, Economic Development & Tourism is the property owner of Kakaako Waterfront Park, Kakaako Mauka Gateway Park, Kakaako Makai Gateway Park Kolowalu Park and the Kewalo Basin Park (collectively "Parks") in Honolulu, Hawaii.

The work to be performed under this contract shall consist of complete janitorial services, cleaning, inspections and repairs to the park comfort stations, emptying and maintaining all park trash cans, and other general maintenance work located at the Parks for the HCDA. Contractor shall furnish all labor, supplies, materials, parts, tools, equipment, transportation and supervision to satisfactorily provide these services, effective Wednesday, February 1, 2017.

All prospective Bidders are invited to attend a voluntary pre-bid conference to be held at the Hawaii Community Development Authority at 547 Queen Street, Honolulu, Hawaii. Although this meeting is not mandatory, we strongly encourage interested Bidders to attend.

1.03 SCHEDULE

HlePRO Posting/Procurement Notice System (PNS):	Tuesday, January 3, 2017
Informational Pre-Bid Conference: Location: HCDA 547 Queen Street Honolulu, Hawaii 96813 First floor	Monday, January 9, 2017 9:00 AM
Deadline to Submit Written Inquiries:	Thursday, January 5, 2017, 3:00 PM
Response to Written Inquiries	Friday, January 6, 2017, 4:00 PM
Solicitation Due:	Tuesday, January 17, 2017, 1:00 PM
Anticipated Contract Start Date	Wednesday, February 1, 2017

1.04 CONTRACT ADMINISTRATOR

For the purpose of this contract, the CA is Lindsey Doi, HCDA Asset Manager, or her appointed representative who may be contacted at:

Phone: (808) 594-0300
Fax: (808) 587-0299
Email: contact@hcdaweb.org

SECTION TWO

SPECIFICATIONS

2.01 SCOPE OF WORK

JANITORIAL SERVICES. Contractor shall furnish all labor, equipment, personal use products and cleaning supplies as listed herein (See Section 2.02) to satisfactorily perform janitorial services at the Kakaako Waterfront Park and Kewalo Basin Park comfort stations. All personal use products and cleaning supplies furnished under this contract must be approved by the HCDA; All personal use products and cleaning supplies substitutions must be approved by the HCDA in advance of use of any substitutions. The Contractor shall also be responsible for replenishing these supplies and refilling them in the proper receptacles or fixtures when required.

- Kakaako Waterfront Park: approximately 28 acres.
- Kakaako Mauka Gateway Park and Kakaako Makai Gateway Parks: approximately 5 acres combined.
- Kolowalu Park: 2.31 acres
- Kewalo Basin Park: approximately 7.5 acres.

Quantities listed in section 2.02 are **estimated** based on current service provider. The HCDA does not guarantee that the quantities listed will not change during the contract period. Furthermore, the HCDA will not compensate the contractor for any increases in consumption of supplies.

In addition to the items listed in Section 2.02, the Contractor shall be responsible to provide equipment and supplies such as ladders, brooms, mops, sponges, brushes, dusters, scouring pads, soap, disinfectants, cleaning detergents, paper products, light bulbs, and trash bags necessary to perform specified services required by the HCDA.

All chemicals used for this contract shall meet Federal and State requirements. The Contractor shall furnish HCDA the appropriate Material Safety Data Sheets (MSDS) for all chemicals. Contractor shall furnish appropriate safety and public notification signs for all chemicals used for fulfilling this contract.

Services shall include cleaning the following twice a day:

	<u>Waterfront Park</u>	<u>Kewalo Basin Park</u>	<u>Total</u>
No. of Comfort Stations	3	2	5
No. of Sinks	9	4	13
No. of Toilets	13	8	21
No. of Urinals	4	2	6
No. of Mirrors	2	1	3

JANITORIAL SERVICES REQUIRED

A. Daily Services

1. Open all comfort stations doors upon park opening in the morning and secure all doors to remain open. Lock all comfort stations doors upon park closure at night.
2. Empty all comfort station trash cans by 2 p.m.
 - a) Clean and line refuse containers. Trash shall be removed from the comfort stations and disposed of in dumpster or trash container separate from the containers located in the comfort stations.
3. Clean comfort stations twice a day as indicated above in Section 2.01.
 - a) Thorough cleaning in morning shift.
 - 1) Sweep, scrub, wet mop, and disinfect all restroom surfaces including floors, seats, walls, ledges, floor drains, and outdoor showers.
 - 2) Clean, remove stains, scrub, and disinfect all restroom fixtures including basins, toilets, urinals and drains.
 - 3) Clean and polish mirrors, fixtures and dispensers.
 - 4) Remove smudges, graffiti, and markings from interior walls and doors.
 - 5) Clean and wipe drinking fountains including its fixtures.
 - b) During the afternoon shift, spot clean as needed and restock all dispensers as needed.
 - c) All cleaning staff shall make a verbal announcement before entering any comfort station.
4. Replenish supplies and personal use products in comfort station dispensers twice daily, in the morning and afternoon.
 - a) Fill all paper towel and soap dispensers.
 - b) Soap and all paper products, including toilet tissue and paper towels, shall be made available in quantities to last at least 24 hours.

B. Weekly Services

1. Remove algae, debris, feces and buildup from outdoor shower area.
2. Remove algae and debris from drinking fountains.

C. As Required

1. Perform corrective maintenance such as cleaning out blockages and removing clogs in toilets, sinks, and shower drains.
2. Paint over graffiti inside and outside comfort stations which cannot be removed by cleaning.
3. Remove and replace burnt-out light bulbs in the interiors and exteriors of the comfort stations.
4. Replace broken soap dispensers, fixtures, sinks, urinals and commodes (billed from allowance provided in bid). **In an emergency situation, Contractor shall notify the CA or her designated representative immediately of the imminent danger to the safety and welfare of the public.**
5. General litter and debris removal from the promenade, walking paths, picnic tables and pavilions.
6. Contractor shall report in writing to the CA or her designated representative, any damage or repairs required at each facility. Information provided to the CA or her designated representative shall include:
 - a. The specific location of the comfort station.

- b. A detailed description and location of the item that needs repairing.
- c. A detailed description of the problem.

Example: Kewalo Basin – Ala Moana side Men's Restroom, center toilet leaking around base.

TRASH COLLECTION. Contractor shall provide trash disposal and replacement of the trash can liners for the HCDA as listed in Section 2.01(A) and the below Trash Collection Services Required section. Such collection shall include all labor, transportation, equipment and supplies (including, but not limited to, trash cans, trash bags, gloves, rakes, brooms, and dust pans) necessary to replace and dispose of trash in accordance with the Specifications herein.

The State reserves the right to add or remove trash cans to the contract at the contracted price.

TRASH COLLECTION SERVICES REQUIRED

1. Trash cans shall be emptied completely once a day, with a minimum of spillage of dust or solids. Spillage or overflow of any type, within a 10-foot area, shall be completely picked up and removed by the Contractor. The area should be left broom clean, free of any debris and rubbish. Collection shall be conducted in a safe manner.
2. Trash collections will NOT be scheduled earlier than 6:00 a.m. and all pickups will be completed no later than 6:00 p.m. No night trash pickups shall be allowed unless approved by the CA. If for any reason collection is not made as scheduled, Contractor shall be given twenty-four (24) hours to "make up" a collection without being penalized. If "make up" collection is not made within twenty-four (24) hours, penalty of \$200.00 per day will be deducted from the monthly invoice.
3. Emptied trash cans shall be returned to their designed stations in a condition that will be safe, and sanitary to all users.
4. Contractor shall dispose of all Parks trash daily in the dumpster bins located in the Kakaako Waterfront Park, Kewalo Basin Park and the Kewalo Basin Harbor as identified on the attached maps.

TRASH CANS

Once awarded, Contractor is responsible for the repair, maintenance, and replacement of the existing 120 trash cans. All trash cans installed during the contract period, which commences upon the Notice to Proceed ("NTP") shall be clean, freshly painted and of uniform appearance, and in good repair.

The location of trash cans will be determined by the HCDA. Contractor will not be responsible for the condition of any container that has been maliciously burned or vandalized.

EQUIPMENT

Vehicles and equipment used by Contractor to collect and remove the trash shall be clean and well maintained at all times, both mechanically and in appearance. All equipment used to collect and remove trash shall be covered to prevent littering.

GENERAL MAINTENANCE. Contractor shall conduct general maintenance and repairs beyond the Janitorial and Trash Collection scope of work stated above, as directed by the HCDA in writing. Contractor shall receive prior written approval from the HCDA for the work being done and the amount being charged. The work may include, but is not limited to,

restroom plumbing repairs, restroom electrical repairs, parking lot pot hole repairs, painting, graffiti removal, and fence repair.

WORK LOG

Contractor employees shall keep accurate daily records of work performed under this contract by accurately recording time worked on log sheets. Contractor shall use daily work log sheets approved by the CA. Work log sheets shall be kept secured at the comfort station storage areas and a copy provided to the CA upon the CA's request.

Work log sheets shall be turned in to the CA monthly. The HCDA will use the work log sheets to verify hours and wages paid to employees for work performed. By signing the work log sheets, the Contractor certifies that the employees performed all services required in accordance with the terms of the contract. Failure to submit the required work log sheets will delay payment to the Contractor.

The work log sheets shall accurately the hours worked by Contractor's staff for this contract. Contractor's failure to submit the hours worked by its staff will delay payment to the Contractor.

KEYS

If applicable, Contractor shall be responsible for any HCDA key(s) loaned to the Contractor for entry to the restrooms while performing services under the contract. Contractor shall return all keys within twenty-four (24) hours of contract termination or when requested by the HCDA. Contractor shall be charged for lock and key replacement(s) if keys are lost during the term of the contract or not returned within twenty-four (24) hours of contract termination. Contractor shall not make copies of any keys provided by HCDA without the express permission of the CA.

STORAGE AREA

Contractor shall have access to on-site storage areas contiguous to comfort stations for the storage of personal use items, supplies, equipment and work log sheets.

2.02 CONTRACTOR FURNISHED CLEANING SUPPLIES

Offeror shall identify on the appropriate spaces below the exact brand or manufacturer and product number of each product offered. Failure to do so or the inclusion of remarks such as "as specified" shall be sufficient grounds for rejection of the offer.

<u>Item</u>	<u>Description</u>	Kakaako Waterfront Park	Kewalo Basin Park
		<u>Estimated Use Per Year</u>	
1	Toilet Paper Rolls, Kimberley Clark Scott #04460, rolls, 2-ply, fully bleached (white), 80 rolls per case Offering: _____	72 cases total	Included in total
2	Toilet Paper Jumbo Roll, Georgia Pacific Acclaim, #13105, single ply, fully bleached (white), 3.5" wide x 4000 ft long, 24,000 linear feet per case, 6 rolls per case Offering: _____	50 cases total	Included in total
3	Trash Bags, 36"w x 50"l gallon capacity, 2 mil min., 150 bags per case (for 50 gallon drum) Offering: _____	292 cases total for (120) 50-gallon trash cans.	Included in total
4	Ajax, Comet, or equal. Offering: _____	5 each	2 each
5	Chlorine Bleach, Clorox, Pure Bright, or equal, 6 gallons per case. Offering: _____	23 cases	8 cases
6	Graffiti Paint (dark grey) Offering: _____	3 gallons	1 gallon
7	Deodorant blocks (for urinals) Offering: _____	4 boxes	3 boxes

2.03 GENERAL REQUIREMENTS

- A. All equipment used shall be operated in accordance with manufacturer's instructions and in a safe manner with all appropriate safety devices in place and operational. The Contractor shall comply with all applicable safety regulations promulgated by the Occupational Safety and Health Administration ("OSHA") or other government agencies. OSHA or Division of Occupational Safety and Health approved safety gear shall be worn by workers at all times when operating equipment.
- B. The Contractor shall thoroughly and correctly train all personnel employed by the Contractor. All personnel employed by the Contractor shall wear company uniforms at all times, as supplied by the Contractor. The Contractor shall be responsible for all safety training of its employees and its subcontractors.
- C. The Contractor shall maintain, at all times, an adequate number of properly trained personnel and competent supervision to permit the timely completion of all operations. Only licensed personnel shall apply chemicals which require a license to be applied.
- D. Materials shall always be applied in strict accordance with manufacturer's directions and shall cause no hazards or dangers to the Parks or the general public. Where alternate products are available, the Contractor must present information for the optional products to the HCDA to compare environmental impacts of each product.
- E. The Contractor shall limit its personnel's activities to maintenance tasks only and shall not perform work that is not specified in the Contract without the prior request and approval by the HCDA. Additional work not specified in the Contract shall be submitted as a written proposal showing the itemized cost of labor, equipment, and materials. Additional work shall not commence without the expressed approval of HCDA.
- F. In addition to daily work logs (See Work Log section), the Contractor shall submit a detailed monthly inspection/completion report for presentation to the HCDA. This report is to document precisely all work performed, by specific location, for the HCDA's records including date, number of employee hours and all equipment and materials used. Progress payments may be withheld if the detailed monthly inspection reports are not timely submitted to the HCDA.
- G. The Contractor shall be responsible for the repair of any and all damages resulting from his or her activities while working on site. The repair of the damages shall be at no additional cost to HCDA. If the Contractor is unable to make all required repairs, the HCDA shall contract for the repairs necessary and deduct the costs from the Contractor's next month invoices.
- H. The Contractor shall replace broken fixtures or plumbing at Contractor's expense if the damage of the plumbing was caused by Contractor's negligence or direct act.

- I. The Contractor shall provide a list of phone numbers of personnel who can be contacted in case of an emergency at the project site. The Contractor shall provide an initial response to an emergency call within one (1) hour of receiving the emergency call, and have personnel on-site within three (3) hours of initial notification for emergency work.
- J. The Contractor shall maintain good order among its employees and shall ensure compliance with all park rules. A copy of current park rules shall be provided by HCDA to the Contractor. Should park rules be changed or amended HCDA will provide the Contractor with a copy of the changed or amended park rules. Courtesy shall be extended to all park users at all times.
- K. The Contractor shall submit a detailed Janitorial and Trash Collection and General Maintenance Plan (collectively "work plan") ten (10) days after the award of the Contract for approval by the HCDA. The work plan shall identify specific operations and tasks.

CONTRACTOR'S RESPONSIBILITY

It shall be the Contractor's responsibility to provide safety signs, barricades, and any other safety device during the performance of service. These safety devices shall be set-up by the Contractor whenever employees are performing services such as damp mopping, washing concrete flooring, and whenever a ladder is being used. Safety devices shall be set-up in a manner to restrict access to the area, to prevent accidents and injuries to park patrons, as well as the general public.

Contractor's employees shall announce themselves to the public prior to entering restroom facilities so as to alert any users of their presence prior to entering into facility.

Contractor shall adhere to all provisions of the Hazard Communication Standard as administered by the Department of Occupational Safety and Health (DOSH), State of Hawaii pertaining to the use of hazardous chemicals at the job site. This requirement shall include but not be limited to the following:

- 1. Caution signs shall be provided and displayed at each location where there is exposure to toxic materials or harmful physical agents. Labels shall be affixed to all toxic materials or harmful physical agents, or their containers, warning of their potential danger.
- 2. Contractor shall post informational Material Safety Data Sheets (MSDS) prominently regarding hazards posed by toxic materials or harmful physical agents in the employers' workplace. The information shall include suitable precautions, relevant symptoms, and emergency treatment in case of overexposure.
- 3. Contractor's employees, who are required to handle or use poisons, caustics, chemicals and other harmful substances, shall be instructed in the proper and safe handling and use of such products and made aware of the potential hazards, as well as the personal hygiene and protective measures required for safe handling. If any poisons, caustics, chemicals and other harmful substances require a license to handle the Contractor shall ensure Contractor's employees has the required license/s.

2.04 WORK SCHEDULE

Kakaako Waterfront Park Comfort Stations

All services shall be performed between 6:00 a.m. and 10:00 p.m., once a day in the morning and once in the afternoon. This schedule shall be followed seven (7) days a week, including holidays, 365 days a year. Contractor shall unlock and secure comfort station doors at 6:00 a.m. and lock secure comfort station doors at 10:00 p.m.

Kewalo Basin Park Comfort Stations

All services shall be performed between 5:00 a.m. and 10:00 p.m., once a day in the morning and once in the afternoon. This schedule shall be followed seven (7) days a week, including holidays, 365 days a year. Contractor shall unlock and secure comfort station doors at 5:00 a.m. and lock and secure comfort station doors at 10:00 p.m.

CHANGES IN WORK SCHEDULE

The Contract Administrator or his designated representative, reserves the right to change the scheduled days or times of work, at no additional cost to the HCDA, provided Contractor's representative is notified, verbally or in writing, two days prior to the requested change. If the change requires adding or deleting cleaning day(s), the Contractor shall assess or reduce the charges, as appropriate, based on the unit bid prices shown on Bid Form, page BF-5.

If the CA determines that any comfort station facility cannot remain operational (full or partial closure) due to any reason, the Contractor shall invoice the State only for services performed, if any for the period of time the comfort station cannot remain operational. HCDA will inform the Contractor whether any comfort station will be fully or partially closed.

2.05 INSPECTIONS

- A. Weekly inspections may be held at the Parks by HCDA. The Contractor or its designated representative shall be present at each weekly inspection. These inspections shall be coordinated between HCDA and the Contractor.
- B. The HCDA reserves the right to conduct periodic unscheduled inspections at any time to observe and evaluate the progress of work.
- C. If, after each weekly inspection, the HCDA determines that all work has been performed in accordance with the specifications, the HCDA shall confirm its acceptance of the work and shall process the monthly payment at the end of the month. If any portion of the work is deemed unacceptable under the terms and intent of the Specifications (See Section Two), the monthly payment may be withheld for that portion of the work until the work is completed or corrected to the satisfaction of the HCDA.

SECTION THREE

SPECIAL PROVISIONS

3.01 TERM OF CONTRACT

The initial term of contract shall be for the thirty-six (36) month period commencing from the official date on the Notice to Proceed.

3.02 CONTRACT EXTENSION

Unless terminated and subject to availability of funds, the contract may be extended without re-bidding, upon mutual agreement in writing between the HCDA and the Contractor, prior to the expiration date, for a period not to exceed two (2) additional twelve (12) month periods, or a portion thereof; provided, however, the contract price for the extended period shall not be increased above the then current contract price, subject to any price increase allowed by the contract. See Section 3.19.

3.03 BIDDER QUALIFICATIONS

To assure the HCDA that the Bidder is capable of performing the work specified herein, Bidder must meet the following requirements at the time of bidding:

1. **Experience.** At the time of bid submittal, Bidder shall have a minimum of five (5) consecutive years of experience in the performance of Janitorial work similar to this project in size and scope prior to bid opening that demonstrated the ability and responsibility to meet contractual requirements. Bidder shall indicate its number of years of experience on the appropriate Bid Form page.
2. **Office/Service Facility Location.** Bidder shall maintain a permanent office and service facility on the island of Oahu at the time of bidding and during the contract period from where Bidder conducts business during normal working hours and from where Bidder will be accessible to requests or complaints. Bidder must be able to verbally respond to the HCDA within two (2) hours of the initial call/request. Award(s) shall not be made to any Bidder not meeting this qualification requirement. All Bidders shall list contact information for its local office and/or responsible individuals who can be contacted by the HCDA on matters concerning this solicitation on the appropriate Bid Form page.

Award will not be made to any Bidder failing to meet ALL of the above qualifications. Failure to meet these qualification requirements shall result in rejection of the bid. Further, satisfaction of these requirements must be maintained by the Contractor during the entire contract period.

The HCDA reserves the right to disqualify any potential Bidder if, in its discretion, the HCDA determines that the Bidder does not have the requisite experience or expertise to provide the goods and/or services required.

3.04 PRE-BID CONFERENCE, ADDENDA, CLARIFICATIONS

Prospective Bidders are encouraged to attend a pre-bid conference at the HCDA office, located at 547 Queen Street. The purpose of the meeting will be to discuss and explain the scope of work and basis for contract award. Failure of the Bidder to attend this meeting and to receive information discussed, which may be pertinent to the bid, shall not entitle the Bidder to seek additional payment later for any misunderstandings of the work specified herein.

Addenda may periodically be issued that may increase or decrease the scope of work or contract time, provisions or conditions. Bidders are responsible for the information contained in the addenda or bid clarification.

Bidders discovering an ambiguity, inconsistency or error when examining the bidding documents, the site and/ or local conditions, or Bidders with questions or clarification requests shall submit their written requests under the Question/Answers Section through HlePRO. All written questions will receive a written response from the HCDA that will be published through HlePRO. Questions submitted via e-mail and facsimiles transmission shall not be accepted.

3.05 SITE INSPECTION

Prior to submittal of a bid, Bidder shall visit the park sites on their own to become thoroughly familiar with existing conditions and the extent and nature of work to be performed. The site inspection is not mandatory; however, submission of a bid shall be evidence that the Bidder understands the scope of the project and the contract requirements, and agrees to comply with all Contract requirements including these specifications herein. No additional compensation will be made by reason or any misunderstanding or error regarding conditions at the services areas or the amount and type of work to be performed.

3.06 BID PREPARATION

1. **BIDS.** Bidders shall submit their bids through HlePRO.
2. **BID FORM-1.** Bidders are requested to submit its bid using their exact legal name, as registered with the State of Hawaii, Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on Bid Form-1. Failure to do so may delay proper execution of the contract.

The signed Bid Form page -1 shall indicate Bidder's intent to be bound.

3. **Tax Liability.** Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and Chapter 238, HRS, where applicable. Bidders are advised that the gross receipts derived from this solicitation are subject to the 4.5% general excise tax (GET) imposed by Chapter 237, HRS, and, where applicable, to tangible property imported into the State of Hawaii for resale, subject to the use tax (currently ½%) imposed by Chapter 238, HRS.
4. **Hawaii General Excise Tax License.** Bidders shall submit their current Hawaii GET I.D. number in the space provided on Bid Form-1, thereby attesting that the Bidder

is doing business in the State and will pay such taxes on all sales made to the State.

5. Bid Price. The bid price shall include all supervision, labor, equipment, tools, supplies, materials, services, transportation, all applicable taxes and any other costs incurred to provide services as specified herein.
6. Bid Guaranty. A bid guaranty is not required for this solicitation.
7. Insurance. Bidder shall provide the requested insurance information on the Bid Form, where indicated.
8. References. Bidder shall list on the appropriate Bid Form page a minimum of two (2) companies or government agencies for which Bidder has provided or is currently providing services similar in nature to the services specified herein. The HCDA reserves the right to contact the references provided. The HCDA reserves the right to reject any Bidder who has performed unsatisfactorily on other jobs of a nature similar to those required by this IFB.
9. Wage certificate. Bidder shall complete and submit a Wage Certificate with its bid, **as an attachment on HlePRO**, by which the Bidder certifies that services required will be performed pursuant to §103-55, HRS.
10. Repair Allowance. Contractor may be required to perform additional work. Such work shall be performed only at the direction and/or preapproval of the CA. The Contractor shall be reimbursed for allowance items after services are performed. An allowance amount of **FIFTY THOUSAND DOLLARS (\$50,000)**/year for General Repair will be added to the TOTAL ANNUAL SUM BID when the Contract is prepared.

3.07 SUBMISSION OF BID

Bids shall be received electronically through the HlePRO. **Bids received outside of the HlePRO shall be rejected and not be considered for award.**

Bidders must complete and submit Bid Forms BID-1 to BID-6, a copy of Contractor's License, and copies of CLT or CLP certifications. All these documents must be submitted electronically, **as an attachment**, through the HlePRO. **Bidders are responsible to ensure all forms required are attached when submitting a bid. Bids received without the proper attachments through HlePRO shall be rejected and not be considered for award.**

3.08 CERTIFICATION OF INDEPENDENT COST DETERMINATION

By submission of a bid in response to this IFB, Bidder certifies as follows:

1. The costs in its bid have been arrived at independently, without consultation, communication, or agreement with any other Bidder, as to any matter relating to such costs for the purpose of restricting competition.

2. Unless otherwise required by law, the costs in its bid have not been knowingly disclosed by the Bidder prior to award, directly or indirectly, to any other Bidder or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the Bidder to indicate any other person or firm to submit or not to submit for the purpose of restricting competition.

3.09 DISQUALIFICATION OF BIDS

The HCDA reserves the right to consider as acceptable only those bids submitted in accordance with all requirements set forth in this IFB and which demonstrate an understanding of the scope of services. Any bid offering any other set of terms and conditions contradictory to those included in this IFB may be disqualified without further notice.

3.10 AWARD OF CONTRACT

Award, if made, will be to the responsive, responsible Bidder submitting the lowest total sum bid price. Bidder is required to bid on every line item specified on the Bid Form page(s) to be considered for award.

Bidder shall be disqualified if, for any prior solicitations by HCDA it has ever:

1. Withdrawn its bid after HCDA has opened the bids; or,
2. If Bidder was awarded a contract but did not perform for the primary contract term.

In the event the total sum bid of all bidders exceeds the project control budget, the HCDA reserves the right to make an award to the apparent low bidder if additional funds are available or by reducing the scope of work through negotiation.

The final award of the contract hereunder will be conditioned upon (1) HCDA having the right to hold all bids for a period of ninety (90) calendar days from the date of bid opening, during which no bids shall be withdrawn and (2) funding availability and release.

3.11 EXECUTION OF CONTRACT

The HCDA shall forward to the successful Bidder a formal contract to be signed by the Bidder and returned within ten (10) calendar days or as may otherwise be allowed by the HCDA. No work is to be undertaken by the Contractor prior to the commencement date specified on the Notice to Proceed, (See Section 3.13) issued by the HCDA upon execution of the contract by both parties.

3.12 PERMITS, LICENSES, AND TAXES

The Contractor shall procure all necessary permits and licenses, during the original or extended contract term, pay all applicable charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.

Failure to procure and maintain valid permits and licenses required by law and these specifications may be cause for the HCDA to terminate the contract.

3.13 NOTICE TO PROCEED

Work will commence on the official commencement date specified on the Notice to Proceed form.

3.14 RESPONSIBILITY OF BIDDERS:

Bidder, if determined to be qualified and submitting the lowest responsive bid, is required to submit a "Certificate of Vendor Compliance" as proof of compliance with the requirements of §103D-310(c), HRS. This involves evidence of the following:

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

As proof of compliance, Bidders must furnish to the HCDA a current and valid Certificate of Vendor Compliance from the Hawaii Compliance Express (HCE) system. The HCDA shall verify compliance on HCE. If a Bidder is not compliant on HCE at the time of award, the Bidder will not receive the award.

Hawaii Compliance Express

The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Vendors/contractors/service providers should register with (HCE) prior to submitting a bid at <https://vendors.ehawaii.gov>. The 'Certificate of Vendor Compliance' is accepted for the execution of contract and final payment.

3.15 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTRY CONTRACTORS

Bidders should be aware that if awarded the contract, Section 11-355, HRS, prohibits campaign contributions from State or County government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body.

3.16 STATUTORY REQUIREMENTS OF SECTION 103-55, HRS

Bidder is advised that Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Bidder is further advised that in the event of an increase in wage rates to public employees performing similar work during the contract period, Contractor will be obliged to provide wages no less than those increased wages.

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

To assist the Bidder in determining whether the work of his/her employees are to perform under this contract is similar to work performed by public employees, attached are class specifications for the public employee positions that perform landscape maintenance services. Effective March 1, 2009 the basic hourly wages paid to these State positions are:

<u>Class</u>	<u>Hourly Rate</u>
Janitor I (BC-02)	\$17.75/hour
Janitor II (WS-02)	\$17.99/hour
Janitor Supervisor	\$20.31/hour

Accordingly, Bidder shall consider the aforementioned wage rates when preparing its quote. Bidder shall also submit a signed wage certificate as an attachment on HlePRO.

3.17 PAYROLL AFFIDAVITS

Upon the HCDA's request, Contractor will be required to submit quarterly payroll documentation to the HCDA for all employees working under this contract. Documentation shall include employee time cards, payroll records, and copies of canceled checks to verify that Contractor's employees are being paid State of Hawaii prevailing wages for hours worked under this contract.

3.18 LIABILITY INSURANCE

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance on an occurrence basis to protect the Contractor and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by a subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, Contractor may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the Contractor's own policy or policies.

The Contractor, including its subcontractor(s) where appropriate, shall provide the following minimum insurance coverage(s) and limit(s):

Commercial General Liability:

\$1,000,000 per occurrence and \$2,000,000 in the aggregate
\$1,000,000 Completed Operations Aggregate Limit
\$1,000,000 Each Occurrence Limit
\$1,000,000 Personal & Advertising Limit

Umbrella Liability: \$2,000,000 Aggregate

Worker's Compensation:

Coverage A: As required by Hawaii Laws
Coverage B: Employer's Liability
\$1,000,000 Bodily Injury by Accident Each Accident
\$1,000,000 Bodily Injury by Disease
\$1,000,000 Policy Limit and \$1,000,000 Each Employee

Automobile \$1,000,000 per occurrence and \$2,000,000 in aggregate

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after thirty (30) days written notice has been given to the HCDA, 547 Queen Street, Honolulu, Hawaii 96813."
- 2.. "The State of Hawaii and HCDA their respective elected officials, officers, employees and volunteers are added as an additional insured as respects to operations performed for the HCDA/State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon Contractor's execution of the contract, the Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the State to exercise any or all of the remedies provided in this contract for a default of the Contractor.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, Contractor shall be obliged

for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

3.19 CONTRACT PRICE ADJUSTMENT PURSUANT TO SECTION 103-55, HRS

At the release of this IFB, only the current wages of State employees performing similar work are known. Should their wages increase during any period of the contract, including supplements, the Contractor may request for increase in contract price if the current wages paid for similar positions are lower than wages paid to State employees. The increase requested must result in increase in wages to Contractor's employees performing the work herein, including any increase in costs for benefits required by law that are automatically increased as a result of increased wages, such as federal old age benefit, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid public health insurance.

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

1. At the time of a request, Contractor must provide documentation to show that it is in compliance with Section 103-55, HRS, i.e., its employees are being paid no less than the current wage of the State position listed herein. Documentation shall include the employees' payroll records and a statement that the employees are being utilized for this contract.
2. At the time of bidding, the Contractor must have specified on the appropriate Bid Form page, the percentage of the unit price that represents labor costs. If the Contractor fails to specify the percentage, the Contractor's request for increase will not be considered.
3. Request for increase must be made in writing to the HCDA on a timely basis.
 - a. Request for increase for the initial contract period must be made as soon as practicable after the State wage agreements are made public. Approved request will be retroactive to the date of increase for the State employee.
 - b. Request for an increase for a supplemental period of the contract must be made prior to the start of the supplement. Contractor shall call the Contract Administrator to obtain the current wage information.

If the Contractor meets the above criteria in its request for contract price increase, the following formula shall be used to calculate the increase:

First Increase: $WI = (XY) \times (Z) + FB$

Subsequent Increase(s): $WI = AZ + FB$

WI = Dollar amount increase in unit bid price due to increase in State wages;

X = Original contract unit bid price;

Y = Percentage of unit price designated by Contractor as representing labor costs;

Z = Percentage increase in wages paid to State employees performing similar work;

FB = Additional costs for those benefits required by statute, directly related to the allowed increase in wages paid to Contractor's employees;

A = That portion of the contract amount representing wages (this amount is X times Y plus any increase(s) in contract unit bid price resulting from increase in State wages).

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

3.20 INVOICING

Contractor shall submit an **original and three (3) copies of the monthly invoice**, which includes the contract number and project name to:

Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813

Contractor shall identify separate charges for Additional Work and Repair and Maintenance Work to be deducted from the Allowance.

A "Certificate of Vendor Compliance," issued through the Hawaii Compliance Express system, shall be required for final payment.

3.21 PAYMENT

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

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

3.22 SUBCONTRACTORS

The Contractor shall not delegate any duties listed in this IFB to any subcontractor unless the CA has given its approval. The HCDA reserves the right to approve all subcontractors and shall require the primary contractor to replace any subcontractors found to be unacceptable. The HCDA also reserves the right to condition its approval of any subcontractor on the subcontractor's compliance with terms and conditions contained herein. The primary contractor will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract, and shall be responsible for all services whether or not the primary contractor performs them.

3.23 ENVIRONMENTAL POLLUTION CONTROL

Environmental pollution control shall consist of the protection of the environment from pollution during and as a result of operations under the contract. The control of the environmental pollution requires the consideration of air, water, land, and involves noise, dust, solid waste management as well as other pollutants. It is the responsibility of the Contractor to investigate and comply with all applicable Federal, State, and County laws

and regulations concerning environmental pollution control and abatement and to secure all necessary permits.

3.24 RE-EXECUTION OF WORK

The Contractor shall re-execute any work that fails to conform to the requirements of the contract and shall immediately remedy any defects due to faulty workmanship by the Contractor. Should the Contractor fail to comply, the State reserves the right to engage the services of another company to perform the services and to deduct such costs from monies due to the Contractor.

3.25 REMOVAL OF CONTRACTORS'S EMPLOYEES

Contractor agrees to remove any of his employees from services rendered and to be rendered the State, upon request in writing by the CA.

3.26 RIGHTS AND REMEDIES FOR DEFAULT

In the event the Contractor fails, refuses or neglects to perform the services in accordance with the requirements of the contract, these Special Provisions, the Specifications, and AG008 herein, in addition to the recourse stated in Section 13 of the AG008, the HCDA reserves the right to purchase in the open market, a corresponding quantity of the services specified herein and to deduct from any moneys due or that may thereafter become due to the Contractor, the difference between the price named in the contract and the actual cost thereof to the HCDA. If money due to the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand by the State. The HCDA may also utilize all other remedies provided by law.

3.27 LIQUIDATED DAMAGES

Liquidated damage is fixed at the sum of **TWO HUNDRED DOLLARS (\$200.00)** for each and every calendar day per park location per violation the Contractor fails to perform in whole or in part any of his obligations specified herein. Liquidated damages, if assessed, may be deducted from any payments due or to become due to the Contractor.

3.28 CANCELLATION OF SOLICITATIONS AND REJECTION OF BIDS

The solicitation may be cancelled or the bids may be rejected, in whole or in part, when in the best interest of the purchasing agency, as provided in Section 3-122-96 through Section 3-122-97, HAR.

SECTION FOUR

ATTACHMENTS

• Bid Form, BID-1 to BID-6	ATTACHMENT 1
• Map of Parks	ATTACHMENT 2
• Position Class Descriptions	ATTACHMENT 3
• General Conditions (AG-008)	ATTACHMENT 4

JANITORIAL, TRASH COLLECTION AND MAINTENANCE SERVICES FOR
KAKAAKO WATERFRONT, GATEWAY, AND KEWALO BASIN PARKS
HONOLULU, OAHU, HAWAII

Hawaii Community Development Authority
547 Queen Street
Honolulu, Hawaii 96813

To Whom It May Concern:

The undersigned has carefully read and understands the terms and conditions specified in the Invitation for Bids, including the Specifications, Special Provisions and General Conditions attached hereto and hereby submits the following bid to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this bid, 1) he/she is declaring his/her bid is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents: (Check ✓ one **only**)

- ☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**
☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii, Department of Commerce and Consumer Affairs Business Registration Division to do business in the state of Hawaii.
State of Incorporation: _____

Bidder is:

☐ Sole Proprietor ☐ Partnership ☐ *Corporation ☐ Joint Venture ☐ Other _____

Federal I.D. No.: _____ Hawaii General Excise Tax License I.D. No.: _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

Date: _____

(x) _____

Authorized (Original) Signature

Telephone No.: _____

Name and Title (Please Type or Print)

Fax No.: _____

**

E-mail Address: _____

Exact Legal Name of Company (Bidder)

**If Bidder shown above is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

Are services to be rendered by company employees similar or equal to public officers and employees listed in the attached employee classification description?

Yes _____ No _____

If yes, complete the following:

_____ % represents the labor costs for the Total Basic Bid.

Bidder shall provide the following information:

Bidder's Permanent Office Address: _____

Point of Contact: _____ Telephone Number: _____
Cell Phone Number: _____ E-mail Address: _____

State of Hawaii Business License No.: _____
(Attach a copy of the applicable license)

Number of years experience: _____

Expiration Date: _____

Insurance coverage is carried by, if applicable:

<u>Insurance Coverage:</u>	<u>Carrier</u>	<u>Policy No.</u>
Commercial General Liability:		
Automobile Liability:		
Worker's Compensation:		
Temporary Disability Insurance:		
Prepaid Health Care:		
Unemployment Insurance: State of Hawaii Labor No.:		

Bidder: _____
Name of Company

Bidder's Contact Information for Operations

Bidder must be able to verbally respond to the HCDA within two (2) hours of a call/request. Furnish contact information for the person(s) to contact regarding the "day-to-day" operations and performance of the work provided.

<u>Name/Title</u>	<u>Office Phone</u>	<u>Cell Phone</u>
_____	_____	_____
_____	_____	_____

Current Worksites

List a minimum of two (2) current worksites that bidder is furnishing janitorial, trash collection and maintenance service similar to the services specified herein. The HCDA reserves the right to contact the companies/government agencies who oversee these current worksites to verify the work required and bidder's job performance.

<u>Name of Company/Government Agency</u>	<u>Name of Contact Person</u>	<u>Phone No.</u>
_____	_____	_____
_____	_____	_____

Company and/or Government Agency References

List a minimum of two (2) companies and/or government agencies that bidder has furnished janitorial, trash collection and maintenance service similar to the services specified herein. The State reserves the right to contact these companies/government agencies to ascertain quality and timeliness of services provided.

<u>Name of Company/Government Agency</u>	<u>Name of Contact Person</u>	<u>Phone No.</u>
_____	_____	_____
_____	_____	_____

Bidder: _____
Name of Company

**WAGE CERTIFICATE
FOR SERVICE CONTRACTS**
(See Special Provisions)

Subject: IFB No.: HCDA 01-2017

Title of IFB/: Janitorial, Trash Collection and Maintenance Services for Kakaako Waterfront, Gateway, Kolowalu, and Kewalo Basin Parks

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Bidder _____

Signature _____

Title _____

Date _____

WAGE CERTIFICATE

Landscape Maintenance Services for Kakaako Waterfront, Gateway, Kolowalu, and Kewalo Basin Parks

BID FORM 5 PART A-D

JANITORIAL, TRASH COLLECTION AND MAINTENANCE SERVICES AT THE KAKAAKO WATERFRONT, GATEWAY, AND KEWALO BASIN PARKS

HONOLULU, OAHU, HAWAII

IFB HCDA 01-2017

The following bid to provide janitorial, trash collection, and maintenance services at the Kakaako Waterfront Park, Gateway, Kolowalu and Kewalo Basin Parks under the jurisdiction of the HCDA for a thirty six (36) month period from the official commencement date on the Notice to Proceed is hereby submitted:

Part A Original Contract Period (36 months)

Item No.	Item/Description	A. Unit Bid Price (per month)	B. Quantity (# Months)	Total Bid Price (A x B)
1	Open/close all comfort stations doors and secure		36	\$
2	Empty all trash cans in the parks once a day		36	\$
3	Clean and stock comfort stations twice a day		36	\$
4	Remove algae, debris, and build up from showers weekly		36	\$
5	Remove algae, debris, and build up from drinking fountains weekly		36	\$
6	Removing graffiti from inside and outside the comfort stations weekly		36	\$
7	Replace burnt out and broken light bulbs in the comfort station		36	\$
8	Removal of general rubbish and debris		36	\$
Total Sum Bid Price for Part A (Items 1-8) (Amount to be entered in the HlePRO Bid Response Section)				\$

*Unit Bid Price shall include costs for all labor, equipment, materials, applicable taxes (including the Hawaii General Excise Tax) and any other expenses incurred to provide services as specified herein.

Part B 1st Supplemental Contract Period (12 months)

Item No.	Item/Description	A. Unit Bid Price (per month)	B. Quantity (# Months)	Total Bid Price (A x B)
1	Open/close all comfort stations doors and secure		12	\$
2	Empty all trash cans in the parks once a day		12	\$
3	Clean and stock comfort stations twice a day		12	\$

BID FORM 5 PART A-D

JANITORIAL, TRASH COLLECTION AND MAINTENANCE SERVICES AT THE KAKAAKO WATERFRONT, GATEWAY, AND KEWALO BASIN PARKS

HONOLULU, OAHU, HAWAII

IFB HCDA 01-2017

4	Remove algae, debris, and build up from showers weekly		12	\$
5	Remove algae, debris, and build up from drinking fountains weekly		12	\$
6	Removing graffiti from inside and outside the comfort stations weekly		12	\$
7	Replace burnt out and broken light bulbs in the comfort station		12	\$
8	Removal of general rubbish and debris		12	\$
Total Sum Bid Price for Part B (Items 1-8) (Amount to be entered in the HlePRO Bid Response Section)				\$

*Unit Bid Price shall include costs for all labor, equipment, materials, applicable taxes (including the Hawaii General Excise Tax) and any other expenses incurred to provide services as specified herein

Part C 2ND Supplemental Contract Period (12 months)

Item No.	Item/Description	A. Unit Bid Price (per month)	B. Quantity (# Months)	Total Bid Price (A x B)
1	Open/close all comfort stations doors and secure		12	\$
2	Empty all trash cans in the parks once a day		12	\$
3	Clean and stock comfort stations twice a day		12	\$
4	Remove algae, debris, and build up from showers weekly		12	\$
5	Remove algae, debris, and build up from drinking fountains weekly		12	\$
6	Removing graffiti from inside and outside the comfort stations weekly		12	\$
7	Replace burnt out and broken light bulbs in the comfort station		12	\$
8	Removal of general rubbish and debris		12	\$
Total Sum Bid Price for Part C (Items 1-8) (Amount to be entered in the HlePRO Bid Response Section)				\$

*Unit Bid Price shall include costs for all labor, equipment, materials, applicable taxes (including the Hawaii General Excise Tax) and any other expenses incurred to provide services as specified herein.

BID FORM 5 PART A-D

JANITORIAL, TRASH COLLECTION AND MAINTENANCE SERVICES AT THE KAKAAKO WATERFRONT, GATEWAY, AND KEWALO BASIN PARKS

HONOLULU, OAHU, HAWAII

IFB HCDA 01-2017

Part D Total Sum Bid Period

Item No.	TOTAL BIDS	Total Bid Price
1	TOTAL BID FOR PART A – ORIGINAL CONTRACT PERIOD (36 months)	\$
2	TOTAL BID FOR PART B – FIRST (1 ST) SUPPLEMENTAL YEAR	\$
3	TOTAL BID FOR PART C – SECOND (2 ND) SUPPLEMENTAL YEAR	\$
TOTAL SUM BID FOR GROUP 1 (PARTS A+B+C)*:		\$

*This amount is for bid evaluation purposes only, which include the extension options for an overall evaluation of the contract cost over five (5) years. If mutually agreed upon, supplemental agreements shall be executed for an extension period, subject to the availability of funds. The total contract amount will be of the Original Contract Period.

Bidder must bid on all line items in all groups to qualify for award. HCDA reserves the right to reject any and all bids.

\$50,000 ANNUAL ALLOWANCE WILL BE ADDED TO THE CONTRACT SEPARATELY. DO NOT INCLUDE THIS NUMBER IN YOUR TOTALS ABOVE.

Bidder _____
Name of Bidder

**WAGE CERTIFICATE
FOR SERVICE CONTRACTS**
(See Special Provisions)

Subject: IFB No.: HCDA 01-2017

Title of IFB/: Janitorial, Trash Collection and Maintenance Services for Kakaako Waterfront, Gateway, Kolowalu, and Kewalo Basin Parks

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Bidder _____

Signature _____

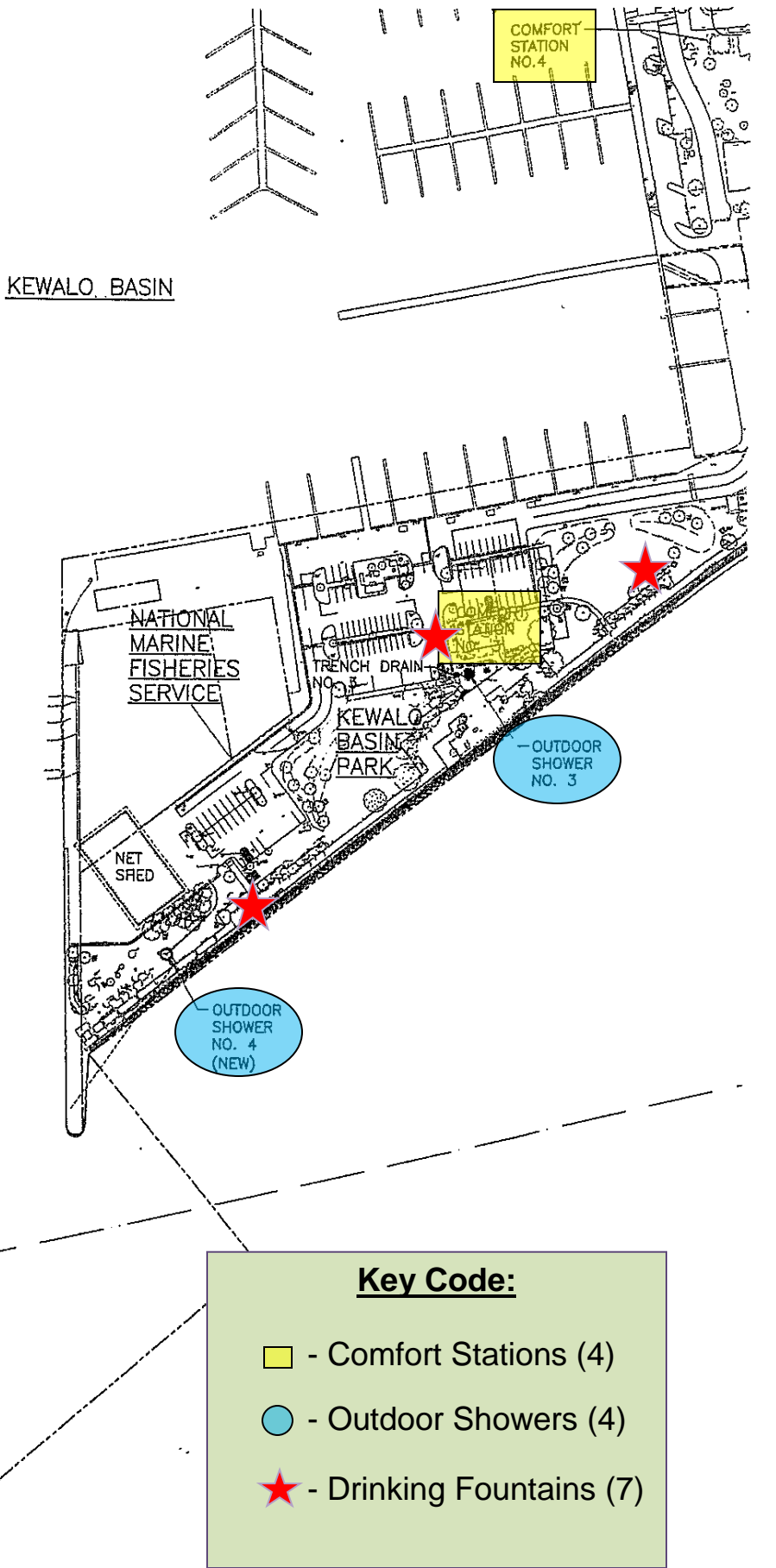
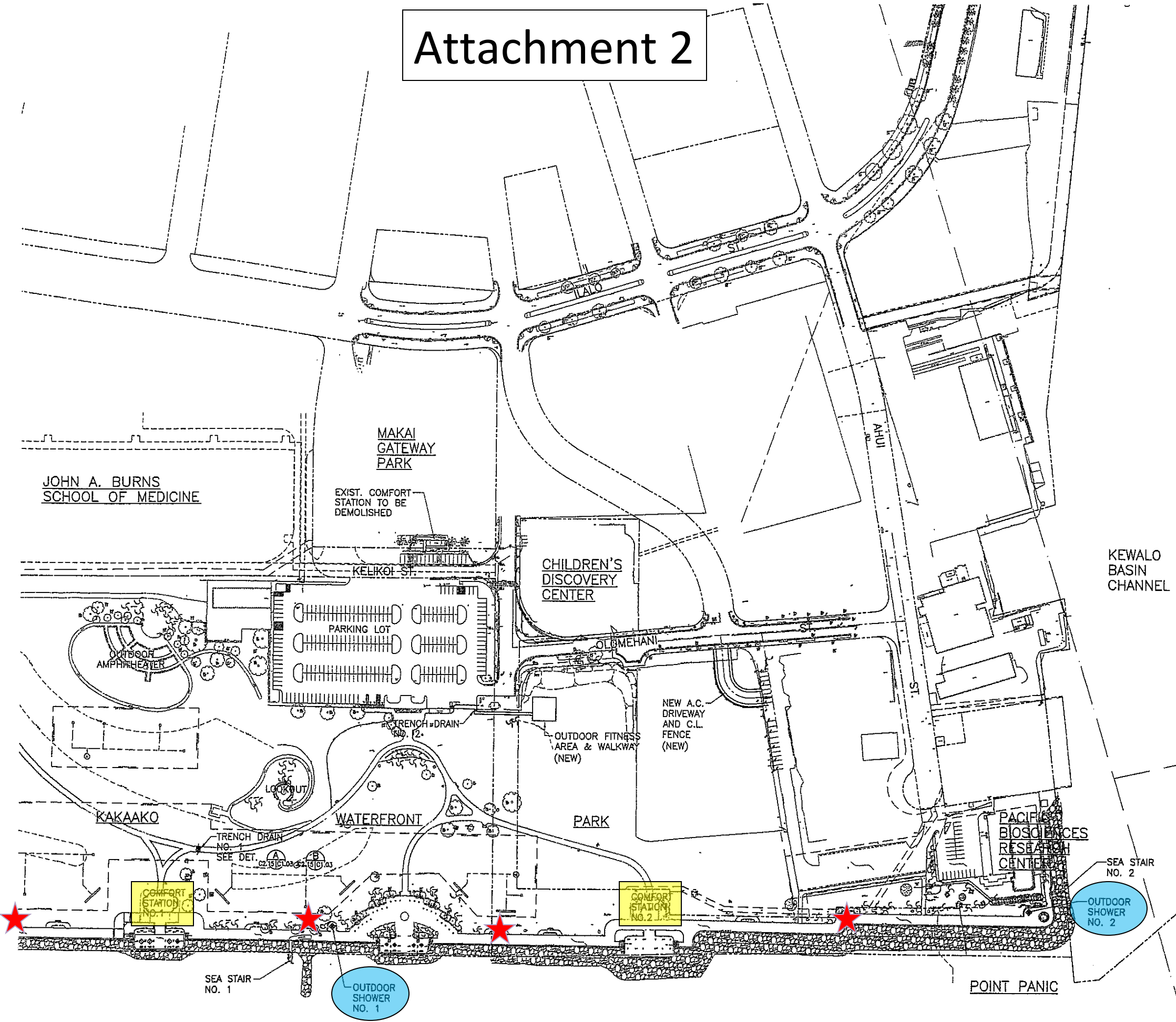
Title _____

Date _____

WAGE CERTIFICATE

Landscape Maintenance Services for Kakaako Waterfront, Gateway, Kolowalu, and Kewalo Basin Parks

Attachment 2



Key Code:

- - Comfort Stations (4)
- - Outdoor Showers (4)
- ★ - Drinking Fountains (7)

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Class Specifications
for the Class:

JANITOR SUPERVISOR I

Duties Summary:

Supervises the work of a group of janitors and other custodial personnel in the cleaning and maintenance of buildings and building areas; and performs other related duties as assigned.

Distinguishing Characteristics:

This class is a full-time supervisor over a group of janitors and other custodial personnel.

Examples of Duties:

Schedules the work of janitors, watchmen and other custodial personnel; conducts inspectional tours of work stations such as offices, elevators, parking areas, washrooms, etc., to insure that proper cleaning, maintenance, security and safety measures have been carried out; notes deficiencies such as the need for repair of equipment, re-cleaning of rooms, etc., and takes corrective action by instructing subordinates on specific tasks to be done, or by notifying proper authorities; inspects work stations and checks on employees' attendance; assigns workers to fill temporary or permanent vacancies; approves or recommends for approval requests for leaves of absences by employees; evaluates work performances of employees; requisitions and issues supplies and equipment; takes inventory of supplies and equipment; keeps records of work activities and submits oral and written reports.

Knowledge and Abilities Required:

Knowledge of: Practices, tools, equipment and materials used in janitorial work; safety practices as applied to janitorial work; building hardware, fixtures and equipment; principles and practices of supervision.

Ability to: Instruct and supervise others in the operation of tools and equipment used in janitorial and simple maintenance work; follow and give oral and written instructions.

This is an amendment to the specification for the class
JANITOR SUPERVISOR I approved on December 14, 1955.

DATE APPROVED: 3/10/83

DONALD BOTELHO
Director of Personnel Services

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Class Specifications
for the Class:

JANITOR II

Duties Summary:

Performs routine manual work in cleaning and maintaining public buildings and also performs heavy lifting, cleans places and equipment which are not easily accessible, does simple building repair work and operates heavy industrial type cleaning equipment; and performs other related duties as assigned.

Distinguishing Characteristics:

In addition to routine cleaning tasks, a position in this class spends a significant amount of work time on more strenuous or demanding tasks such as (1) performing simple building maintenance and repair work not calling for a trade skill, (2) carrying and moving heavy furniture and equipment, (3) cleaning places and equipment which are not easily accessible, and (4) operating heavy-duty industrial cleaning equipment.

Examples of Duties:

Cleans and repairs venetian blinds and cords; hangs and removes curtains and draperies; operates heavy-duty industrial cleaning equipment such as vacuum cleaners, scrubbing machines and floor polishers; replaces fluorescent, standard and other light bulbs; replaces washers, door knobs and does similar minor repair or maintenance tasks not calling for a trade skill; cleans gutters and flat roofs, windows, transoms, electrical fixtures and other places which are not easily accessible; moves and carries heavy furniture and equipment; sweeps and scrubs floors, hallways and stairways; wipes, dusts, washes, waxes and/or polishes furniture, woodwork and fixtures; cleans, mops, disinfects and services lavatories and restrooms; empties and cleans receptacles; mops and waxes floors; cleans table tops, bookcases, drinking fountains, wash basins, etc.; arranges chairs, tables and other furniture for scheduled activities; works on grounds adjacent to the building in which employed, picking up debris, poisoning weeds, mowing lawns, raking leaves and watering lawns, plants and trees; occasionally removes spots and stains from carpets or operates a shampoo machine to clean carpets; may be in charge of janitorial supplies and equipment;

occasionally may perform security attendant duties; and may drive a car or truck to complete assigned tasks.

Knowledge and Abilities Required:

Knowledge of: Practices, tools and materials used in janitorial work.

Ability to: Lift and carry heavy furniture and equipment; understand and follow oral and written instructions; perform minor building repair and maintenance tasks; and operate heavy industrial type cleaning equipment.

This is an amendment to the specification for the class JANITOR II approved on September 14, 1982.

DATE APPROVED: 3/10/83

DONALD BOTELHO
Director of Personnel Services

.

Class Specifications
for the Class:

JANITOR I

Duties Summary:

Performs routine manual work in cleaning and maintaining public buildings; and performs other related duties as assigned.

Distinguishing Characteristics:

Performs routine cleaning tasks in cleaning and maintaining public buildings which rarely involves maintenance repair work or strenuous work such as carrying and moving heavy furniture and equipment.

Examples of Duties:

Sweeps and scrubs floors, hallways, corridors and stairways; cleans, mops, disinfects and services lavatories and restrooms; empties and cleans receptacles; mops and waxes floors; washes, dusts, waxes and/or polishes windows, woodwork, walls and fixtures which are easily accessible; cleans table tops, bookcases, drinking fountains, wash basins, venetian blinds, etc.; arranges chairs, tables and other light furniture and equipment for scheduled activities; locks and unlocks doors and windows; turns lights on and off; operates polishing machine and vacuum cleaner; runs errands; clears bookdrops; may work on grounds adjacent to the building in which employed, raking leaves, picking up debris, and watering lawns, trees; and may operate a car to complete assigned tasks.

Knowledge and Abilities Required:

Knowledge of: Practices, tools and materials used in janitorial work.

Ability to: Perform light manual work; understand and follow oral and written instructions.

This is an amendment to the specification for the class JANITOR I approved on September 14, 1982.

DATE APPROVED: 3/8/83

DONALD BOTELHO
Director of Personnel Services

PART II	DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT	9.310
	STATE OF HAWAII	9.315
.....		9.320
		9.325
	Minimum Qualification Specifications	9.330
	for the Classes:	9.335

JANITOR I, II, III
JANITOR SUPERVISOR I, II
JANITOR SUPERINTENDENT

Experience Requirement

Applicants must have had the kind and quality of experience described below, and in the amounts shown in the following table, or any equivalent combination of training and experience:

Class Title	General Experience (Years)	Supervisory Experience (Years)	Total Experience (Years)
Janitor I	0	0	0
Janitor II	0	0	0
Janitor III	2	*	2
Janitor Supervisor I	2	1	3
Janitor Supervisor II	2	1-1/2	3-1/2
Janitor Superintendent	3	2	5

General Experience: Janitorial or related custodial work such as sweeping, dusting and cleaning of buildings.

Supervisory Experience: Experience which has included responsibility for scheduling and inspecting the work of subordinates; instructing employees in the proper method of performing the work; maintaining discipline; insuring that safety practices are adhered to; and keeping records of work activities.

*For the Janitor III level, applicants must possess supervisory aptitude. Supervisory aptitude is the demonstration of aptitude or potential for the performance of supervisory duties through successful completion of regular or special assignments which involve some supervisory responsibilities or aspects of supervision, e.g., by serving as a group or team leader; or in similar work in which opportunities for demonstrating supervisory capabilities exist; or by the completion of training courses in supervision accompanied by application of supervisory skills in work assignments; and/or by favorable appraisals by a supervisor indicating the possession of supervisory potential.

PART II
JANITOR I, II, III
JANITOR SUPERVISOR I, II
JANITOR SUPERINTENDENT

Page 2
9.310, 9.315, 9.320
9.325, 9.330
9.335

Quality of Experience

Possession of the required number of years of experience will not in itself be accepted as proof of qualification for a position. The applicant's overall experience must have been of such scope and level of responsibility as to conclusively demonstrate that he/she has the ability to perform the duties of the position for which he/she is being considered.

Selective Certification

Specialized knowledge, skills and abilities may be required to perform the duties of some positions. For such positions, Selective Certification Requirements may be established and certification may be restricted to eligibles who possess the pertinent experience and/or training required to perform the duties of the position.

Agencies requesting selective certification must show the connection between the kind of training and/or experience on which they wish to base selective certification and the duties of the position to be filled.

Tests

Applicants may be required to qualify on an appropriate examination.

Physical and Medical Requirements

Applicants must be able to perform the essential functions of the position effectively and safely, with or without reasonable accommodation.

This is an amendment to the minimum qualification specifications for the classes JANITOR I, II, III; JANITOR SUPERVISOR I, II; and JANITOR SUPERINTENDENT, which were approved on March 10, 1983.

DATE APPROVED: 7/23/2012



BARBARA A. KRIEG, Director
Department of Human Resources Development

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

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

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

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

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.