

# GENERAL TERMS AND CONDITIONS OF CONSTRUCTION CONTRACTS OF THE BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU

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## **GENERAL TERMS AND CONDITIONS OF CONSTRUCTION CONTRACTS OF THE BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU**

These General Terms and Conditions of Construction Contracts of the Board of Water Supply, City and County of Honolulu (General Conditions) represent the policy of the BWS, as this term is defined below, relating to construction projects.

Additional copies of the General Conditions are available upon request at the Office of Procurement, 630 S. Beretania Street, Room 201, Honolulu, Hawaii, 96843 or on the BWS website, [www.boardofwatersupply.com](http://www.boardofwatersupply.com).

The separate parts of the invitation for bids, as defined below, including the plans and specifications, are intended to complement each other. Unless the contract documents provide a different order of precedence, addenda shall govern over all other previously issued addenda, and other contract documents; plans shall govern over the BWS standards and specifications and these general conditions; special provisions shall govern over plans, the BWS standards and specifications, and these general conditions. Where there is a discrepancy between the bid proposal and other parts of the invitation for bids, the bid proposal shall govern.

### **ARTICLE 1 - DEFINITIONS; REFERENCES**

#### **1.1 Definitions**

**“Addendum”** means a written document issued by the Contracting Officer or, for Informal Bids, the Officer-in-Charge during the bidding period, involving changes to the Invitation for Bids which shall be considered and made a part of the Invitation for Bids and the Contract.

**“Agreement”** means that certain “Contract for Construction Services entered into by the BWS and the Contractor in connection with the work that is the subject matter of the Invitation for Bids.

**“Bid”** means the executed document submitted by a bidder in response to an Invitation for Bids.

**“Bidder”** means any individual, partnership, firm, corporation, joint venture, or other legal entity submitting either directly or through a duly authorized representative or agent, a bid for the construction contemplated.

**“BWS”** means the Board of Water Supply, City and County of Honolulu, State of Hawaii

**“Change Order”** means a written order signed by the Contracting Officer or, when delegated by the Contracting Officer, by the Officer-in-Charge directing the Contractor to make changes with or without the consent of the Contractor.

**“City and County of Honolulu”** or the **“City”** means the City and County of Honolulu.

**“Construction”** means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

**“Contract”** means all documents covering the construction of the project and services in connection therewith for which award is made to the Contractor, including the furnishing of labor, materials, and equipment in connection therewith. It shall include the Agreement, the notice to contractors, the Bid, the list of subcontractors, the wage schedule, the Invitation for Bids, general instructions to bidders, special provisions, special notice to bidder or special instructions to bidder, the bonds, the bid specifications, the plans, the general conditions, and any documents or publications, addenda, amendments, and change

orders, whether attached thereto or incorporated by reference.

**“Contracting Officer”** means the Manager and Chief Engineer (Manager) of the BWS.

**“Contractor”** means any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the contract with the BWS, and acting directly or through its agents or employees.

**“Days”** means consecutive calendar days unless otherwise specified.

**“Designee”** means a person appointed by the Contracting Officer or the Officer-in-Charge to act on his/her behalf with delegated authority.

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

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

**“Hazardous Materials Laws”** mean and include all federal, State, and City laws, ordinances, rules, regulations or codes, now or hereafter in effect, relating to environmental conditions, human health or industrial hygiene, including but not limited to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), as amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 set seq.), as amended, the Clean Water Act (33 U.S.C. § 1251 et seq.), as amended, the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.) as amended, the Clean Air Act (42 U.S.C. § 7401 et seq.), as amended, the Toxic Substances Control Act (15 U.S.C. Sections 2601 through 2629), as amended, the Safe Drinking Water Act (42 U.S.C. Sections 300f through 300j), as amended, the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.), as amended, the Occupational Safety and Health Act (29 U.S.C. Section 651, et seq.), as amended, Hawaii Revised Statutes, Chapters 128D, 342B, 342D, 342F, 342H, 342I, 342J, 342L 342N, 342P as amended, or any other federal, State, or City environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

**“Improvement District Project”** means a project constructed pursuant to Chapter 14, Revised Ordinances of Honolulu (ROH), entitled “Public Works Infrastructure Requirements Including Fees and Services.”

**“Informal Bid”** means small purchase construction estimated at less than \$25,000, procured by telephone quotations or written bids, and awarded by purchase order.

**“Intellectual Property”** shall mean: (1) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, including patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof; (2) all marks, whether protected under any law, including trademarks, service marks, trade dress, logos, slogans, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (3) all writings and other works subject to copyright protection under the federal Copyright Act, including all copyrighted works, copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith; (4) all mask works and all applications, registrations, and renewals in connection therewith; (5) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing, distribution, and production processes and techniques, technical data, designs, drawings, specifications, customer information and lists, and supplier information

and lists, current and potential client information and lists, current and potential travel industry businesses information and lists, pricing and cost information, business and marketing plans and proposals, and financial information and forecasts); (6) all computer software (including data, disks, licenses and related documentation); (7) all other proprietary and intangible rights and assets, whether actual or potential; and (8) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).

**“Invitation for Bids”** means a request for quotation issued by the BWS for the purpose of soliciting bids to perform construction.

**“Manager and Chief Engineer” or “Manager”** means the Manager and Chief Engineer of the BWS.

**“Notice to Contractors” or “Notice to Bidders,”** means the publication or the notice of a solicitation for bids.

**“Notice to Proceed”** means the document issued to the Contractor designating the official commencement date of the performance under the Contract.

**“Office of Procurement”** means the office within the BWS with delegated authority to solicit bids and award contracts.

**“Officer-in-Charge”** means the Manager and Chief Engineer (Manager) of the BWS or the delegated designee.

**“Procurement”** means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation, and award of contracts, and all phases of contract administration.

**“Purchasing Agency”** means the BWS.

**“Quotation”** means a statement of price, terms of sale, and description of construction offered by a prospective bidder, usually for informal bids.

**“Solicitation”** means an Invitation for Bids or a request for quotation issued by the BWS for the purpose of soliciting bids to perform construction.

**“State”** means State of Hawaii.

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

**“Work Product”** shall mean all materials, work product, works of authorship, studies, data, charts, diagrams, methodologies, processes, descriptions, reports, layouts, videotapes, computer programs, work papers, projections, ideas, inventions and Intellectual Property of any kind that are developed, prepared, assembled, or conceived, in whole or in part, by Contractor and/or its employees, subcontractors, representatives, consultants or agents in the course of providing services pursuant to the Contract or otherwise in connection with the Contract.

**“Working Day”** means any day on the calendar, exclusive of holidays, Saturdays, and Sundays. Unless another meaning is intended, “Working Days” shall mean consecutive working days.

## **1.2 References**

- A. When reference is made to known standards and specifications, the most recently adopted and published edition of such standards and specifications on the date of the notice to contractors is contemplated, unless otherwise specified.

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

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADAAG	Americans with Disabilities Accessibility Act Guidelines
AISC	American Institute of Steel Construction
AITC	American Institute of Timber Construction
ANSI	American National Standard Institute
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
AWS	American Welding Society
FHWA	Federal Highway Administration, U.S. Department of Transportation
FS	Federal Specifications
GO6	General Order No. 6 of the Public Utilities Commission, Rules for Overhead Electric Line Construction
GRJP	General Rules for Joint Use of Poles
HAR	Hawaii Administrative Rules
HRS	Hawaii Revised Statutes
IES	Illuminating Engineering Society
NEC	National Electric Code
ROH	Revised Ordinances of the City & County of Honolulu
UBC	Uniform Building Code
UL	Underwriters' Laboratories, Inc.
UPC	Uniform Plumbing Code
WCLA	West Coast Lumberman's Association

C. BWS and City and County of Honolulu Standards and Specifications. The following are incorporated by reference and are commonly referred to as standards and specifications of the BWS and the City and County of Honolulu:

1. Standard Details for Public Works Construction, September 1984, or its most recent version, commonly referred to, and hereinafter in these General Conditions referred to, as the "Standard Details";
2. Standard Specifications for Public Works Construction, September 1986, or its most recent version, commonly referred to, and hereinafter in these General

Conditions referred to, as the "Standard Specifications";

3. Standard Details for Parks and Recreation Construction, May 1990, or its most recent version; and
4. Water System Standards, Volume I, Approved Material List and Standard Details for Water System Construction, Volume II, dated 2002, and Water System External Corrosion Control Standards, Volume III, dated 1991, or the most recent versions, of the Board of Water Supply, commonly referred to, and hereinafter in these General Conditions referred to, as the "Water System Standards".

## ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

### 2.1 Representations by the Board of Water Supply

- A. Surface and Subsurface Conditions. Where the BWS and/or the City in respect to foundation or other design have made investigation of subsurface conditions, the Contractor may inspect the records of the BWS and/or the City as to such investigation and examine any sample that may be available. Where such information is shown in the plans, said information represents only the statement by the BWS and/or the City as to the character of material that has been actually encountered by the BWS and/or the City in its investigation and is included only for the convenience of the Contractor and other bidders.

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

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

- B. Utilities, Underground. All underground water, gas, oil, telephone, electric, storm drain, sewer, and other pipes or conduits shown on the plans are only approximate in their locations. The Contractor shall make a personal investigation and inspection of the records and drawings possessed by owners of the utilities. The Contractor shall make satisfactory arrangements with the owners of the utilities for the relocation, maintenance and protection of existing utilities.
- C. Materials and Equipment. The BWS does not assume any responsibility for the availability of any materials or equipment required under this contract. Unless otherwise specified in the Invitation for Bids, the bidder shall be considered as having taken into account when submitting a bid the availability of materials or equipment required under the contract, except as provided for in Section 5.3 of these General Conditions.
- D. Estimated Quantities. All quantities appearing in the Invitation for Bids are approximate.

The BWS does not, expressly or by implication, warrant that the actual quantities will correspond therewith. Contractor understands and has included in its bid prices, the entire cost of the performance of the Contract, and it is understood and agreed that there is included in each lump sum or unit priced bid item, the entire cost of any and all items incidental to the performance of the Contract covered by such lump sum or unit priced bid item. By submittal of its bid, the Contractor certifies that it has verified these quantities in a manner deemed necessary or expedient.

## **2.2 Contractor's Representations**

- A. License. Contractor represents that Contractor is a business entity that is experienced and skilled in the construction of projects of the type described in the contract and that Contractor is licensed by the State of Hawaii to engage in the type of construction required by the contract and is in compliance with all applicable laws and regulations precedent thereto.
- B. Contractor's Warranty. By the act of submitting its bid for the proposed contract, the Contractor warrants that:
1. Contractor is validly authorized to do business under and by virtue of the laws of the State of Hawaii, and is currently in good standing thereunder;
  2. The Contractor and all subcontractors intended to be used by the Contractor have carefully and thoroughly reviewed the Invitation for Bids and have found it complete and free from ambiguities and sufficient for the purpose intended;
  3. The Contractor has investigated and examined carefully the site and the Invitation for Bids and understands the nature, location, and character of the project and the site;
  4. The Contractor will perform, with its own organization, work amounting to not less than twenty percent (20%) of the total contract cost, exclusive of costs for materials and equipment the Contractor purchases for installation by its subcontractors, except that any items designated by the Board of Water Supply in the contract as "specialty work" may be performed by a subcontract and the cost of such specialty work so performed by the subcontract may be deducted from the total contract before computing the amount of work required to be performed by the Contractor with its own organization;
  5. The Contractor and all workers, employees, and subcontractors intended to be used are skilled and experienced in the type of construction represented by the construction contract documents bid upon;
  6. Neither the Contractor nor any of the Contractor's employees, agents, suppliers, or subcontractors has relied upon any verbal representations from the BWS, its employees, or agents, including architects, engineers, or consultants, in assembling the bid figure;
  7. The Contractor's bid price is based solely upon the Invitation for Bids and properly issued written addenda and not upon any other written or verbal representation, and based upon the Contractor's own examination and investigation of surface and subsurface conditions and availability of materials and equipment; and
  8. The cautious delivery and performance by Contractor of the Contract will not: (1) violate the provisions of any law; (2) constitute a default under Contractor's Certificate of Incorporation or By-Laws; or (3) result in a conflict with, violation of, or default under any judgment, order, decree, indenture, or other instrument or



document to which Contractor is a party.

- C. Independent Price Determination. By submitting a bid, the bidder certifies that the price submitted was independently arrived at without collusion.
- D. Contractor represents that Contractor has no obligations, commitments, or impediments of any kind that will limit or prevent performance of work as required by the Contract.
- E. Contractor represents that, to the extent required by law, the execution, delivery, and performance of this Contract, and Contractor's directors, shareholders, and officers have, duly approved all transactions related thereto by Contractor, and Contractor has the authority to take all necessary actions to fully perform this Contract.
- F. Differing Site Conditions – Contractor's Responsibility. The Contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor, and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the Contractor's own expense, anything in this contract to the contrary notwithstanding.
- G. Contractor will pay, when due, all taxes relating in any way to moneys received by Contractor under or in connection with the Contract.

## **ARTICLE 3 - SCOPE OF CONTRACT**

### **3.1 Scope of Contract**

- A. The scope of the contract encompasses the construction of the project described in the Invitation for Bids and related services and the furnishing of, and the payment for, all materials, tools, equipment, labor and incidentals necessary for the proper and complete performance of such construction and services by the Contractor.
- B. Additional plans and specifications to be furnished by Officer-in-Charge. The Officer-in-Charge may furnish by written order such additional plans and specifications during the performance of the contract, as may be necessary, to clarify the contract or define it in greater detail, and the Contractor shall comply with such additional plans and specifications. Such additional plans and specifications shall become a part of the Contract.
- C. Omission in Contract. Work incidental to the contract although not specifically referred to in the contract shall be furnished and performed by the Contractor without change in the contract price. Labor, materials and equipment directly or indirectly necessary to complete the construction of the project, whether or not the same may have been expressly provided for in the contract, shall be furnished and performed by the Contractor without change in the contract price.

### **3.2 Contractor to Report Errors and Discrepancies**

- A. The Contractor shall notify the Officer-in-Charge upon discovering any error, omission, or discrepancy:
  - 1. Between the plans and/or specifications and conditions on the site;
  - 2. In the layout given by stakes;
  - 3. In points or instructions furnished by the Officer-in-Charge; or

4. Within the contract or any part thereof.

Such notice shall be: (1) in writing; (2) made as soon as possible but in no event later than one business day after the Contractor discovers the error, omission, or discrepancy; and (3) shall be sent to the Officer-in-Charge in accordance with the notice provisions of the Agreement.

After notifying the Officer-in-Charge about an error, omission, or discrepancy as described in this section, the Contractor shall proceed with the performance of the contract only after receiving written approval or instructions from the Contracting Officer.

B. Utilities

1. In the event any utilities are damaged or disturbed by the Contractor in the course of or in connection with performing under this Contract, the Contractor shall immediately notify the Officer-in-Charge.
2. The Contractor shall be held liable for the damaged or disturbed utilities under any of the following conditions:
  - a. Utilities were shown on the plan;
  - b. Utilities were located and exposed on the job as it progressed;
  - c. Utilities were pointed out to the Contractor in the field;
  - d. The Contractor should have been made aware of the utilities through the Contractor's diligent personal investigation and inspection of the records and drawings of owners of the utilities, supplemented by probing, actual digging, or by other means in the field if necessary, to have determined the actual locations of utilities with all their branch and services lines; or
  - e. The Contractor failed to exercise reasonable care in the performance of the work, whether or not shown on the plans.
3. If utilities, which were not shown on the plans, not located or exposed on the job as the work progressed, not pointed out in the field, or not discovered through the Contractor's investigation and inspection of the records and drawings of owners of the utilities, supplemented by probing, actual digging, or by other means in the field if necessary, are damaged or disturbed by the Contractor, the Contractor shall not be held liable, but shall notify the Officer-in-Charge immediately.
4. The Contractor shall, upon receiving instructions from the Officer-in-Charge, repair and restore the damaged or disturbed utilities to the preexisting condition. If the Contractor is liable under Section 3.2(B)(2) above, then the Contractor shall bear all costs associated with such repair and restoration. If the Contractor is not liable under Section 3.2(B)(3) above, then such repair and restoration shall be considered extra work.
5. If the Contractor is liable under Section 3.2(B)(2) above, then any damage claims due to the disruption of service caused by the utilities being damaged shall be paid by the Contractor, who shall hold the BWS harmless from all suits, actions, and claims of any character brought on account of such damage.
6. Utilities that must be relocated due to construction and are not so indicated in the Invitation for Bids shall be considered extra work.

- C. Timeliness of Claim. No claim of the Contractor shall be allowed unless the Contractor has given all notices required by this Section 3.2; provided, however, that the time prescribed therefore may be extended by the Officer-in-Charge in writing. No claim shall be allowed if asserted after final payment under the Contract.
- D. Knowledge. Nothing contained in this Section 3.2 shall be grounds for an adjustment in compensation if the Contractor had actual knowledge or should have had knowledge of the existence of such conditions prior to the submission of bids.

### 3.3 Modifications

- A. In Writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of the Contract permitted by the Contract shall be made by written amendment signed by the Contractor and the BWS, provided that change orders shall be made in accordance with Section 3.3(C) of these General Conditions.
- B. No Oral Modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of the Contract shall be permitted except as set forth in Section 3.4 of these General Conditions.
- C. Change Orders. The Officer-in-Charge may at any time, without notice to any surety, issue a change order to make changes in the work within the scope of the Contract as may be found to be necessary or desirable. Such changes shall not invalidate the Contract or release the sureties, and the Contractor will perform the work as changed, as though it had been part of the original contract. Minor changes in the work may be directed by the Officer-in-Charge at no change in contract price or time.  
  
Any change will be set forth in a change order or written order. Where such additional work is ordered in a written order other than a change order, the Officer-in-Charge will, as soon as practicable, issue a change order, provided that the Officer-in-Charge promptly and duly makes such provisional adjustments in payments or time for the direct costs of the work as changed as the Officer-in-Charge deems reasonable. In the absence of a change order or written order, the Contractor will not be entitled to payment for any such extra work.
- D. 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 the Contract, whether or not changed by the order, an adjustment may be made and the Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined in accordance with Section 3.3(F) of these General Conditions pursuant to Section 3-125-4 HAR.

Failure of the parties to agree to an adjustment in time shall not excuse a Contractor from proceeding with the contract as changed, provided that the Officer-in-Charge, within fourteen (14) days after the changed work commences, makes such provisional adjustments in time as the Officer-in-Charge deems reasonable.

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

Should the Contractor delay or refuse to submit detailed cost breakdown for the changed work, the Officer-in-Charge may pay the Contractor in accordance with Section 3.3(E) of

these General Conditions.

- E. Price Adjustment. Any adjustment in contract price made pursuant to the Contract shall be determined in one or more of the following ways:
1. By agreement on a fixed price adjustment before commencement of the pertinent performance ;
  2. By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
  3. At the sole option of the Officer-in-Charge, by the costs attributable to the event or situation covered by the change, plus appropriate profit or fee as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
  4. Whenever there is a variation in quantity for any work covered by a line item in breakdown costs provided by the Contractor pursuant to contractual pre-work submittal requirements, by the Officer-in-Charge, at the Officer-in-Charge's discretion, adjusting the lump sum price proportionately;
  5. In such other manner as the parties may mutually agree before commencement of the pertinent performance;
  6. In the absence of agreement between the parties, in accordance with the provisions of Section 103D-501(b)(5), HRS, and applicable sections of Chapters 3-122, 125, and 126, HAR.
- F. In determining the cost or credit to the BWS resulting from a change, the allowances for all overhead, extended overhead resulting from adjustments to contract time (including home office and field overhead) and profit combined, shall not exceed the percentages set forth below:
1. For the Contractor, for any work performed by its own labor forces, twenty (20) percent of the cost;
  2. For each subcontractor involved, for any work performed by its own forces, twenty (20) percent of the cost;
  3. For the Contractor or any subcontractor, for work performed by their subcontractors, ten (10) percent of the amount due the performing subcontractor.
  4. Not more than three (3) line item percentages for fee and overhead, not to exceed the maximum percentages shown above, will be allowed regardless of the number of tier subcontractors.
  5. The BWS in determining an adjustment in price using any of the methods listed in Section E paragraphs (1) through (5) above may not mandate that the contractor submit its proposal for a price adjustment at a specified percentage that it unilaterally considers to be acceptable.
  6. The provisions in this section shall not be construed to impair the right of a contractor and BWS from mutually agreeing to a price adjustment under any method listed in paragraphs (1) through (5) of Section E above.

G. Variations in Estimated Quantities. Where the quantity of a pay item in the Contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in the contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Officer-in-Charge shall, upon receipt of a timely written request for an extension of time, prior to final payment of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Officer-in-Charge the findings justify. Any adjustment in the contract price shall be in accordance with Section 3.3(F) of these General Conditions.

H. Cost or Pricing Data

Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 103D-312, HRS, and Chapter 3-122, subchapter 15, HAR.

1. Application. For any adjustment exceeding \$100,000, the Contractor shall submit cost or pricing data and certification of that data except as provided for in Section 3.3(H)(3) of these General Conditions. For adjustments less than \$100,000, the Officer-in-Charge may, upon written determination that the circumstances warrant submission of cost or pricing data, require cost or pricing data.
2. Cost or Pricing Data Defined. Cost or pricing data mean all facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Such data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of a prospective contractor's judgment about future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are facts that can reasonably be expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred including such factors as:
  - a. Vendor quotations;
  - b. Nonrecurring costs;
  - c. Information on changes in production methods and in production or purchasing volume;
  - d. Data supporting projections of business prospects and objectives and related operations costs;
  - e. Unit cost trends such as those associated with labor efficiency;
  - f. Make or buy decisions;
  - g. Labor union contract negotiations; and
  - h. Information on management decisions that could have a significant bearing on costs.
3. Exceptions. Cost or pricing data are not required if the price is based on: (1) contract unit prices; (2) adequate competition, as in receiving bids or quotations

from various subcontractors or suppliers for changed work; (3) established catalogue prices or market prices; or (4) prices set by law or regulation. However, the Officer-in-Charge may request cost or pricing data if the Officer-in-Charge considers that such price is not reasonable.

4. Submission of Cost or Pricing Data and Certification. Cost or pricing data shall be submitted to the Officer-in-Charge prior to beginning price negotiations. The Contractor shall submit certification of that as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of the date of reaching agreement on price. Certification constitutes a representation as to the accuracy of the data upon which the Contractor's judgment is based. A certificate of current cost or pricing data shall not substitute for examination and analysis of the Contractor's proposal.
5. Defective Cost or Pricing Data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or not current as of the date stated in the certificate, the BWS is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data.

If the Contractor and the Officer-in-Charge cannot agree as to the existence of defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the Officer-in-Charge shall set an amount in accordance with the provisions of subchapter 15, chapter 3-122, HAR, and the Contractor may appeal this decision as a contract controversy under chapter 3-126, HAR.

- I. Modification of Bonds. For any single modification to the Contract in the amount of \$50,000 or more, or modifications involving lesser amounts that exceed \$50,000 in the aggregate, the Contractor shall certify to the BWS that all applicable bonds have been amended to reflect this modification to the Contract.
- J. Claims. Upon receipt of a written order or change order, the Contractor shall proceed with the work. Failure of the parties to agree to an adjustment shall not excuse a Contractor from proceeding with the contract as changed. The right of the Contractor to dispute the contract price or time or both shall not be waived by its performing the work, provided however, that the Contractor follows the notice requirements for disputes and claims established by these General Conditions.

If the Contractor does not agree with any of the terms or cost of the change order work, the Contractor shall, **within thirty (30) days** after receipt of a written change order, unless such period is extended by the Officer-in-Charge in writing, file notice of intent to assert a claim for an adjustment. The requirement for filing a timely written notice cannot be waived and shall be a condition precedent to the assertion of a claim for change order work. No claim by the Contractor for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under the contract, provided that in the absence of a change order, nothing herein shall restrict the Contractor's right to pursue a claim arising under the contract or for breach of contract.

No claim shall be made by the Contractor for any loss of anticipated profits because of any alterations, or by reason of any variation between the approximate quantities and the quantities of work as done.

### 3.4 Claims Based on Oral Directives

- A. Oral Directives. Any oral order, direction, instruction, interpretation or determination from the Officer-in-Charge which, in the opinion of the Contractor, causes any change, can be considered as a change only if the Contractor gives the Officer-in-Charge written notice of its intent to treat the oral order, direction, instruction, interpretation or determination as a change directive. The written notice must be delivered to the Officer-in-Charge before the Contractor acts in conformity with the oral order, direction, instruction, interpretation or determination, but **not more than five (5) days after** delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, whether a time extension will be requested, and source of the order that the Contractor regards as a change. The written notice may not be waived and shall be a condition precedent to the filing of a claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any oral order shall not be treated as a change and the Contractor waives any claim for an increase in the contract time or contract price related to the work.
- B. Acknowledgment of Oral Directive. **Not more than five (5) days after** receipt of the written notice from the Contractor, the Officer-in-Charge shall issue a change order for the subject work if the Officer-in-Charge agrees that it constitutes a change. If no change order is issued in the time established, it shall be deemed a rejection of Contractor's claim for a change. If the Contractor objects to the Officer-in-Charge's refusal to issue a change order, it shall file a written protest with the Officer-in-Charge **within thirty (30) days after** delivery to the Officer-in-Charge of the Contractor's written notice of its intention to treat the oral order as a change. In all cases the Contractor shall proceed with the work. The protest shall be determined in accordance with the disputes provisions under Section 8.6 of these General Conditions.

### 3.5 Value Engineering Incentive

- A. Definitions. As used in this section, the following terms have the following meanings:
1. **"Net savings"** means those savings in project costs realized by the BWS as the result of a value engineering change proposal after deducting the contractor's share of the cost savings.
  2. **"Single contract"** means the single construction for which the cost savings is proposed.
  3. **"Value engineering"** means an analysis of the requirements for the systems, equipment and supplies of the single contract for the purpose of achieving a net savings by providing less costly items than those specified without impairing any essential functions and characteristics as service life, reliability, substitutability, economy of operations, ease of maintenance, and necessary standing functions.
  4. **"Value Engineering Change Proposal"** means a cost reduction proposal based on Value Engineering submitted by the contractor pursuant to this section and particularly identified as such.
- B. Applicability. The provisions of this section shall apply to any BWS construction contract in excess of \$100,000. The application of value engineering incentives shall not be construed to have an effect on the solicitation or the selection of a Contractor.

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

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

C. General Provisions

1. The processing of a Value Engineering Change Proposal shall be similar to that for any proposed contract change order and shall be considered only after the construction contract is awarded.
2. Nothing herein shall be construed to mean that the BWS must accept or approve any or all Value Engineering Change Proposals submitted in accordance with this section. The Officer-in-Charge's interpretation and findings relative to the impairment of the functions or characteristics of the item or items covered by the Value Engineering Change Proposal shall be final.
3. Adjustment in contract prices and allowances for implementation costs shall be in accordance with this section and shall only be considered if and when the Contracting Officer approves the Value Engineering Change Proposal. The receipt of the Value Engineering Change Proposal by the BWS or a verbal acceptance of a Value Engineering Change Proposal by any employee of the BWS will not obligate the BWS to accept the Value Engineering Change Proposal.
4. The Officer-in-Charge may impose, as a condition of acceptance of any Value Engineering Change Proposal, a requirement that the Contractor warrant the statements, claims and other information contained in the Value Engineering Change Proposal. In addition, the contractor's responsibility under any such warranty shall be in addition to the liability imposed by the "guarantee of work" requirement as included in the contract.
5. The Contractor shall be responsible for the new design of the facility or a portion of the facility submitted as a Value Engineering Change Proposal, including errors and omissions and, if the Value Engineering Change Proposal is for a portion of the facility, for any adverse impacts the new design may have on the unchanged portions of the facility.

D. Conditions for a Value Engineering Change Proposal. A Value Engineering Change Proposal to a contract shall:

1. Result in an estimated net savings to the BWS in the project cost of at least four thousand dollars (\$4,000) by providing less costly items than or using different construction methods from those specified in the contract without impairing any essential functions and characteristics as service life, reliability, substitutability, economy of operation, ease of maintenance, and necessary standardized features of the completed work;
2. Require a change order to the Contract;
3. Not adversely impact the performance schedule or the contract completion date;
4. At a minimum, provide the following information:
  - a. A description of the difference between the existing contract requirements and the value engineering change proposal and the comparative advantages and disadvantages of each including durability,



service life, reliability, substitutability, economy of operation, ease of maintenance, desired appearance, design, safety standards, impacts due to construction, and other essential or desirable functions and characteristics as appropriate;

- b. An itemization of the requirements of the contract which must be changed if the value engineering change proposal is adopted and a recommendation as to how to make each change;
- c. An itemized estimate of the reduction in performance costs that will result from adoption of the value engineering change proposal or parts thereof taking into account the costs of implementation by the contractor, including any amounts attributable to subcontractors, and the basis for the estimate;
- d. A prediction of any effects and impacts the value engineering change proposal would have on: (1) other costs to the BWS as the costs of BWS-furnished property, related items, and maintenance and operation over the anticipated life of the material, equipment, or facilities as appropriate; (2) the construction schedule, sequence and time; and (3) bid item totals used for evaluation and payment purposes;
- e. A statement of the time by which a change order adopting the value engineering change proposal must be issued so as to obtain the maximum cost reduction during the remainder of the contract, noting any effect on the contract time; and
- f. If previously submitted, the dates of any previous submissions, the contract numbers of those contracts for which it was submitted and the previous actions by the BWS, if known.

E. Preparation, Evaluation, and Acceptance of Value Engineering Change Proposal.

- 1. The Contractor shall submit with each Value Engineering Change Proposal the information as required by this section and provide all additional information as may be required by the Officer-in-Charge to evaluate and implement the Value Engineering Change Proposal. The cost for preparing the Value Engineering Change Proposal shall be the Contractor's responsibility and will be part of the Contractor's cost for implementing the change, and compensation shall be made only when the proposal is accepted by the BWS and the adjustment in contract price is made as provided for in this section.
- 2. When in the judgment of the Officer-in-Charge, a Value Engineering Change Proposal alters the design prepared by a registered professional architect or engineer, the Contractor shall ensure the proposed changes are prepared by or under the supervision of a registered professional architect or engineer, and stamped and so certified.
- 3. If the services of the BWS's architect, engineer, or consultant are necessary to review and evaluate a Value Engineering Change Proposal, the cost therefore shall be paid for by the Contractor.
- 4. The evaluation and acceptance of all Value Engineering Change Proposals shall be in accordance with the requirements as listed in this section. Each Value Engineering Change Proposal shall be evaluated as applicable to the particular project, and past acceptance on another BWS project of a similar item shall not

be automatic grounds for approval.

5. A Value Engineering Change Proposal will be processed expeditiously and in the same manner as prescribed for any other proposal that would likewise necessitate issuance of a Change Order to the Contract. Unless and until a Change Order applies a Value Engineering Proposal to a contract, the contractor shall remain obligated to perform in accordance with the terms of the Contract and the BWS shall not be liable for delays incurred by the Contractor resulting from the time required for the BWS's determination of the acceptability of the Value Engineering Change Proposal. The determination of the Officer-in-Charge as to the acceptance of any Value Engineering Change Proposal under the Contract shall be final.
6. The Officer-in-Charge may accept in whole or in part any Value Engineering Change Proposal submitted pursuant to this section by issuing a Change Order to the Contract. Prior to issuance of the Change Order, the Contractor shall submit complete final contract documents similar to those of the original contract showing the accepted changes and the new design and features as well as the following:
  - i. Design calculations;
  - ii. The design criteria used; and
  - iii. A detailed breakdown of costs and expenses to construct or implement such revisions. The change order will identify the final value engineering change proposal on which it is based.
7. When a Value Engineering Change Proposal submitted pursuant to this section is accepted under the Contract, an equitable adjustment in the contract price and in any other affected provisions of the contract shall be made in accordance with this section and Section 3.3 of the General Conditions. The equitable adjustment shall first be established by determining the effect on the Contractor's cost of implementing the change, including any amount attributable to subcontractors and to the BWS's charges to the Contractor for architectural, engineering, or other consultant services and the staff time required to examine and review the proposal. The contract price shall then be reduced by fifty percent (50%) of the net estimated decrease in the cost of performance.
8. The Contractor may restrict the BWS's right to use the data or information or both on any sheet of a Value Engineering Change Proposal or of the supporting data, submitted pursuant to this subsection, if it is stated on that sheet as follows: "This data or information or both shall not be disclosed outside the BWS, or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this value engineering change proposal. This restriction does not limit the BWS's right to use this data or information or both if obtained from another source, or if otherwise available, without limitations. If this proposal is accepted by the BWS by issuance of a change order to the contract after the use of this data or information or both in such an evaluation, the BWS shall have the right to duplicate, use and disclose any data or information or both pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and have others so do."

In the event of acceptance of a Value Engineering Proposal, the BWS shall have all rights to use, duplicate, or disclose, in whole or in part, in any manner and for

any purpose whatsoever, and to have or permit others to do so, any data or information or both reasonably necessary to fully utilize such proposal.

9. Notwithstanding the provisions of this section, for any construction contract, the Contractor shall not be precluded from making substitution requests in accordance with Section 1.13 of the General Instructions to Bidders. The Officer-in-Charge shall be the sole judge of whether a proposal is a Value Engineering Change proposal or a substitution request.
- F. Value Engineering Sharing Method. The method by which the Contractor will share a portion of the cost savings from an accepted Value Engineering Change Proposal shall be in accordance with Section 3.5(E) of these General Conditions and the following:
1. The Contractor's share in cost savings shall be for the single contract only, and no consideration shall be made for future acquisition, royalty type payment, or collateral savings.
  2. The BWS may accept the Value Engineering Change Proposal, in whole or in part. The Officer-in-Charge shall issue a Change Order to the Contract or otherwise modify the Contract to identify and describe the accepted Value Engineering Change Proposal.

### **3.6 Contract Not Binding Unless Funds Available**

- A. No Contract or Change Order shall be binding or of any force and effect without an endorsement by the Manager that there is an appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the Contract or the Change Order.
- B. Certification of a Portion of Funds. Notwithstanding the requirement for endorsement above, certification of a portion of the total funds required for a Contract or Change Order may be permitted when an immediate solicitation or amendment to a Contract will result in significantly more favorable contract terms and conditions to the BWS than a solicitation or amendment made at a later date; provided that certification for partial funding shall be permitted only if the Manager states in the certificate that the availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues. All Contracts and Change Orders partially funded shall be enforceable only to the extent to which funds have been certified as available.
- C. Contracts Involving Federal Funds
1. In any contract involving not only State, City, or BWS funds but also supplemental funds from the Federal government, or involving one hundred percent (100%) Federal funds, this section shall be applicable only to that portion of the contract amount obligated and payable out of State, City, or BWS funds; however, this provision shall be liberally construed so as not to hinder or impede the BWS in contracting for any project involving financial aid from the Federal government.
  2. Unless otherwise specified, the Contractor, by submittal of a bid and acceptance of an award, agrees that payment of that portion of the contract amount that is supplemented or funded entirely by Federal funds shall be payable upon receipt of those Federal funds.
- D. In the event that any contract modification, change order, or adjustment results in an

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

### **3.7 Assignment of Contract; Name Change**

- A. Assignment of Contract Generally. Subject to Sections 3.7(B) and 3.7(C) of these General Conditions, the Contractor shall not assign any of the Contractor's duties, obligations, or interests under this Agreement without the prior written consent of the BWS.
- B. Assignment of Contract to Successor in Interest. When in the best interest of the BWS and upon written consent by the Contracting Officer, a successor in interest may be recognized in an assignment agreement in which the assignor, the assignee, and the BWS agree that:
  - 1. The assignee assumes all of the assignor's obligations under the Contract;
  - 2. The assignor remains liable for all obligations under the Contract but waives all rights under the Contract as against the BWS; and
  - 3. The assignor shall continue to furnish, and the assignee shall also furnish, all required bonds.
- C. Name Change. When a Contractor requests to change the name in which it holds a contract with the BWS, the Contracting Officer shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect such a change of name. The agreement changing the name specifically indicates that no other terms and conditions of the contract are thereby changed.

### **3.8 Relationship of Parties; Independent Contractor Status**

- A. In the performance of services required under the 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 the Contract; provided, however, that the BWS shall have a general right to inspect work in progress and to determine whether, in the BWS's opinion, the services are being performed by the Contractor in compliance with the Contract.
- B. The Contractor and its employees and agents are not by reason of this Contract, agents or employees of the BWS for any purpose, and the Contractor and its employees and agents shall not be entitled to claim or receive from the BWS any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to BWS employees.
- C. The Contractor shall be responsible for the accuracy, completeness, and adequacy of the Contractor's performance under the 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 Agreement, for all loss, damage, or injury caused by the Contractor, or the Contractor's employees, agents or

subcontractors in the course of their employment.

- D. The Contractor shall be responsible for payment of all applicable federal, state, and county taxes and fees that may become due and owing by the Contractor by reason of this Agreement, including but not limited to: (i) income taxes; (ii) employment related fees, assessments, and taxes; and (iii) general excise taxes. The Contractor is also responsible for obtaining all licenses, permits, and certificates that may be required in order to perform the services required by this Contract.
- E. The Contractor shall obtain a general excise tax license from the Department of Taxation of the 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 of the State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the Contractor have been paid and submit the same to the BWS prior to commencing any performance under this Agreement. The Contractor shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under section 103-53, HRS.
- 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.

#### ARTICLE 4 – PERFORMANCE

##### 4.1 Commencement Requirements

- A. Notice to Proceed
  - 1. Upon execution of the contract by the Contracting Officer, the Officer-in-Charge may schedule a preconstruction conference or issue a Notice to Proceed to the Contractor designating the official commencement date for performance of the Contract.
  - 2. Unless otherwise specified in the Invitation for Bids, the notice to proceed shall be issued **within sixty (60) days** after execution of the contract by the Contracting Officer unless a later date is agreed to by mutual agreement. In the event that the notice to proceed is delayed beyond the sixty (60) days or the time mutually agreed to, the contract amount may be adjusted in accordance with Section 8.1 of these General Conditions, or the Contracting Officer may, upon recommendation by the Officer-in-Charge, terminate the contract for convenience.
- B. Commencement of Work
  - 1. Unless otherwise specified by the Officer-in-Charge, the Contractor shall begin work **within ten (10) working days** from the official commencement date and shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall notify the Officer-in-Charge at least **three (3) working days before** beginning work. At any subsequent suspension and resumption of work, the Contractor shall notify the Officer-in-Charge at **least twenty-four (24) hours before** beginning actual operations.
  - 2. Unless otherwise specified in the Contract or in any written order, the Contractor shall not proceed with any part of the Contract such as ordering of any

equipment or materials, or performing any work, prior to the official commencement date.

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

C. Shop Drawings and Other Submittals

1. Shop Drawings. After receipt of the notice to proceed or other written order, the Contractor shall prepare and submit for acceptance in writing by the Officer-in-Charge, six prints of the shop drawings required by the contract, including fabricated materials, in the manner directed by the Officer-in-Charge. Shop drawings shall be finished plans, and shall be neat, legible, and drawn to scale. Delays caused by the failure of the Contractor to submit shop drawings in a timely manner will not be considered as justifiable cause for extension of time. The Officer-in-Charge shall respond in writing **within thirty (30) days** after receipt of any submittal, or resubmittal if corrections are required.

It shall be expressly understood that acceptance or approval by the Officer-in-Charge of the Contractor's shop drawings does not relieve the Contractor of any responsibility for accuracy of dimensions and details and for agreement and conformity of the shop drawings with the contract plans and specifications and that acceptance by the Officer-in-Charge is a general acceptance relating only to their sufficiency and compliance with the intention of the contract. The Contractor shall clearly identify and inform the Officer-in-Charge of any deviations from the contract documents at the time of submission and shall obtain the Officer-in-Charge's written acceptance of the specified deviation prior to proceeding with any work.

2. The Contractor shall screen, stamp, and sign all submittals before submitting them to the Officer-in-Charge for acceptance in writing. Submittals shall be identified by project title and appropriate specification section numbers or construction plan sheet numbers or both, and shall indicate all data necessary for evaluation. All non-applicable data shall be blocked out and deviations from specifications shall be clearly marked and justified.
3. Unless otherwise specified, the Contractor shall submit six (6) prints of working or shop drawings to the Officer-in-Charge for acceptance as to method of construction and design prior to the commencement of the work under contract or the delivery to the project site of any equipment or material covered by the drawings, whichever is later. The Officer-in-Charge may require the drawings to be resubmitted as often as necessary to render them complete, legible, and free from extensive corrections. If a re-submittal is required, the Officer-in-Charge shall return one print to the Contractor who shall make all the corrections or additions shown thereon. The Contractor shall then resubmit six (6) prints of the corrected drawings for written acceptance by the Officer-in-Charge.
4. No working or shop drawings that have been approved shall be changed without the written approval of the Officer-in-Charge and the Contracting Officer. After acceptance, the Contractor may proceed with the parts of the project called for in such drawings.
5. The Contractor shall submit for the acceptance of the Officer-in-Charge other submittals as required by the Contract.

- D. Payment and Performance Schedules. **Within seven (7) days** of the official commencement date or within such further time as the Officer-in-Charge may allow, the Contractor shall submit for acceptance in writing of the Officer-in-Charge:
1. Unless otherwise specified by the Contract, the performance schedule shall be of the critical path method (CPM) type or approved equal, in the form of a network diagram and activity listing. The schedule shall show in sufficient detail and in orderly sequence all activities, their description, duration, relationship, and dependencies necessary to the completion of the contract. It shall contain, but not be limited to, the sequence of all operations including procurement and mobilization of equipment, plant, and materials to complete the work within the contract period. If the schedule is not accepted, it shall be revised as directed by the Officer-in-Charge. Changes in the schedule shall be made only with the written acceptance of the Officer-in-Charge. The schedule shall be used as a basis for establishing major construction operations and as a check on the progress of the work performed under the contract. Claims by the Contractor for delays including related time extensions may be considered only if the initial performance schedule has been accepted by the Officer-in-Charge.  
  
**Within seven (7) days** after receipt of recommended revisions to the performance schedule, the Contractor shall submit a revised schedule to the Officer-in-Charge for acceptance. Progress payments will be withheld until final approval of the schedule. At all times the schedule shall represent the Contractor's plan for orderly completion of the work. Any changes to the schedule shall require the written acceptance of the Officer-in-Charge. The Contractor shall update the schedule within fifteen (15) days of acceptance of any change to the schedule or deviation of thirty (30) days between the Contractor's performance and the accepted schedule.
  2. The Contractor's work week schedule, in days and hours that the Contractor intends to work. Changes to the schedule shall not be made without written acceptance by the Officer-in-Charge.
  3. Payment Schedule. Together with the performance schedule, the Contractor shall submit for the Officer-in-Charge's acceptance an estimated payment schedule which coincides with the performance schedule. The schedule shall include an itemized breakdown of lump sum items. The schedule shall list the anticipated monthly payment and shall be used by the BWS for project budgeting purposes. Revised payment schedules shall be submitted for acceptance by the Officer-in-Charge immediately on acceptance of revised performance schedules.
- E. Personal Supervision. The Contractor, at all times, shall be present in person, or be represented by the Contractor's superintendent with authority to act for the Contractor in connection with the contract during the performance of the contract. Prior to the start of work, the Contractor shall submit to the Officer-in-Charge the name of the person charged with the responsibility of all work. Pursuant to Section 8.1 of these General Conditions, failure of the Contractor or its superintendent to be present at the job site may result in suspension of the work by the Officer-in-Charge.
- F. Contractor's Place of Business. The Contractor shall maintain, for the duration of the contract, a permanent place of business within the State where the Contractor may be served notice and legal process. Written notice may also be served on the Contractor or its superintendent on the project site personally, or via facsimile machine if the Contractor has one, or via mail to the local post office address or post office box.

G. Field Office; Field Telephone

1. Field Office. If required in the Invitation for Bids, the Contractor shall provide a field office for the Officer-in-Charge at a location approved by the Officer-in-Charge. It shall be available **within seven (7) days after** the commencement of the work under the contract. Unless otherwise specified in the invitation for bids, the field office shall be weatherproof and not less than one hundred twenty (120) square feet in gross floor area. The aggregate window areas of the office shall not be less than ten percent (10%) of the floor area, and one exterior door shall be provided with a keyed cylinder-type lock. The office shall be furnished with one drafting table having a dimension of not less than 3' x 6' and a stool, adequate plan racks and hangers, one (1) desk, two (2) chairs, shelves, a broom, telephone service, electric outlets, electric lighting, paper towels, paper cups, soap, toilet paper, and potable water and shall be maintained in good repair and in a clean and sanitary condition by the Contractor. If the office is not equipped with a water closet and lavatory, the Contractor shall make other arrangements to provide such facilities for the Officer-in-Charge. The Contractor shall comply with the requirements of the Land Use Ordinance of the City and County of Honolulu, relating to Special Permit Use and ADAAG. Payment for the field office shall be as specified in the Invitation for Bids.
2. Field Telephone. If required in the Invitation for Bids, the Contractor shall provide a field telephone for the Officer-in-Charge. Such field telephone shall be placed at a convenient and accessible location and housed in a box provided with a door, which may be secured by a keyed cylinder-type lock. Payment for field telephone shall be as specified in the Invitation for Bids.

H. Project Sign. If required in the Invitation for Bids, the Contractor shall provide signs to identify the project. The signs shall be erected at locations approved by the Officer-in-Charge at the site of the project **upon commencement** of the work under the contract. Signs shall be properly erected and kept clean and legible. After completion of the work under the contract and final acceptance thereof, the Contractor shall remove the signs as the Contractor's property. Payment for the project signs will be as specified in the Invitation for Bids.

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

J. Surveys and Construction Stakes, Lines, and Grades

1. All lines, levels and elevations are to be laid out and checked by a surveyor or civil engineer licensed in the State at the Contractor's expense. The Contractor shall furnish all land surveys and construction stakeout necessary for the completion and acceptance of the project. All survey work shall be laid out and checked by a surveyor or civil engineer licensed in the State at the Contractor's own expense. The Contractor shall furnish a certificate or document signed by the surveyor or civil engineer certifying that the completed lines, levels, and



elevations are in conformity with the contract. The Contractor shall verify all lines, levels, and elevations indicated in the contract before any excavation or construction begins.

2. Any discrepancy shall be immediately brought to the attention of the Officer-in-Charge and any change shall be made in accordance with the Officer-in-Charge's instructions. The Contractor shall not be entitled to any additional payment if the Contractor fails to report the discrepancies before proceeding with work within the area affected by the discrepancies.

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

L. Electrical and Water Services. Unless otherwise specified in the Invitation for Bids, the Contractor, at its own expense, shall make arrangements for electrical and water services required for the performance of the Contract.

M. Traffic Control

1. The Contractor shall obtain the necessary permits from the City's Department of Transportation Services **prior to commencing operations**. The Contractor shall notify the Honolulu Police Department and the Honolulu Fire Department of the construction work in progress and the blocking of any street during construction. Warning signs of adequate size, wording, and construction shall be located and installed as directed by the City's Department of Transportation Services, and the Contractor shall abide by other directives that may be issued by the City's Department of Transportation Services to eliminate other traffic problems and hazards.
2. Work on any City street or in any area adjacent to a City street where traffic is impeded shall be performed between the hours of 8:30 a.m. to 3:30 p.m., unless otherwise permitted by the City's Department of Transportation Services.
3. Whenever possible, the Contractor shall maintain roadways suitable for two lanes of traffic while construction is in progress. The Contractor shall provide adequate traffic control as required by the approved permit during working hours.
4. When material excavated for substructure construction is placed adjacent to the trench or excavation, it shall be placed in such a manner as to economize space and minimize interference with traffic. If necessary, such material shall be confined by suitable bulkheads or other devices. If the street is not of sufficient width to hold excavated material without using part of an adjacent walkway, a passageway in compliance with the requirements of the ADA shall be provided and kept open at all times.
5. When substructure excavations cross street intersections, safe crossings for vehicles and pedestrians shall be provided and maintained. Pedestrian crossings shall be of a safe non-slip material, be separate from vehicle crossing

and be provided with handrails except in areas opened for vehicular traffic.

6. During nonworking hours, all excavations on the roadway shall be covered with a safe nonskid bridging material and all excavations in the sidewalk area shall be covered with a safe, non-slip surface.
  7. The Contractor shall provide paved detours as necessary.
  8. A roadway may be closed only with the express permission of the City's Department of Transportation Services.
  9. The Contractor shall cooperate with the Officer-in-Charge, the City's Department of Transportation Services and other authorized persons in locating all warning signs, lights, walkways and detours required under this subsection. If the Contractor fails to promptly provide adequate warning signs, lights, walkways and detours, the Officer-in-Charge may provide them at the Contractor's expense. The Contractor shall pay the cost of such work to the BWS, or the BWS may deduct the cost from any moneys due the Contractor from the BWS.
  10. All costs under this subsection shall be considered incidental and shall be included in the bidder's bid prices for the various items of work.
- N. Locate and Protect Utilities. The Contractor shall make a personal investigation and inspection of the records and drawings possessed by owners of the utilities, and supplement such information by probing, actual digging, or by other means in the field if necessary to determine the actual locations of underground utilities and all branch and service lines. The Contractor shall make satisfactory arrangements with the owners of the utilities for the relocation, maintenance and protection of existing utilities and shall furnish the Officer-in-Charge with evidence in writing that satisfactory arrangements have been made, **not less than ten (10) days** before the commencement of the parts of the project under the contract affecting such utilities.

#### **4.2 Professional Work**

The Contract shall be performed in an orderly and professional manner in accordance with currently acceptable practice in Hawaii and shall be of the best quality, except as clearly specified otherwise in the Contract.

#### **4.3 Contract, Plans, and Specifications to be Kept On-Site**

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

#### **4.4 Construction Methods and Equipment**

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

#### **4.5 Access and Inspection**

- A. The BWS may perform inspections of any site related to the project, including but not limited to the Contractor's plant, the plant of one or more of the Contractor's subcontractors, and the plant of one or more of the Contractor's suppliers, in order to determine:

1. Whether the standards set forth in Section 1.1 of the General Instructions to Bidders have been met or are capable of being met;
  2. Whether the Contract is being performed in accordance with its terms;
  3. Whether the goods or services are acceptable by inspection of the goods or services;
  4. The accuracy of cost or pricing data by audit of its books and records in accordance with Section 3-122-175, HAR; or
  5. Whether to debar or suspend a person from consideration for award of contracts pursuant to sections 3-126-11 through 3-126-18, HAR.
- B. During the performance of the Contract, the Contractor shall provide the Officer-in-Charge with proper and safe facilities for access to the site of the project and the shops of the Contractor, its subcontractors or suppliers. The Contractor, its subcontractor, or supplier shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing. Such assistance may include but not be limited to installation of hoists and ladders necessary to inspect the plant or the site of the project.
- C. The presence or absence of an inspector shall not result in the waiver of any requirements of the contract, nor shall any act, statement or omission by an inspector constitute or be deemed a change unless the procedure for changes is followed.
- D. Other contractors of the BWS shall be permitted access to the site of the project when it is required for performance of their respective contracts.
- E. Audit of the Contractor's Books and Records. The BWS may, at reasonable times and places, audit the books and records of the Contractor and subcontractors that are related to the work performed under the Contract.
- F. Covered Work
1. If a portion of the work is covered contrary to the request of the Officer-in-Charge or to requirements specifically expressed in the contract, it must, if required in writing by the Officer-in-Charge, be uncovered for the inspection and be replaced at the Contractor's expense without change in the contract time.
  2. If a portion of the work has been covered which the Officer-in-Charge has not specifically requested to inspect prior to its being covered or is not expressly required by the contract to remain uncovered for inspection, the Officer-in-Charge may request to see such work and it shall be uncovered by the Contractor. If such work is in accordance with the contract, costs of uncovering and replacement shall, by appropriate change order, be charged to the BWS. If such work is not in accordance with the contract, the Contractor shall pay such costs unless the BWS or a separate contractor in which event the BWS shall be responsible for payment of such costs caused the condition.
  3. The Contractor shall promptly correct work rejected by the Officer-in-Charge or failing to conform to the requirements of the contract, whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected work, including additional testing and inspections and compensation for any consultant services and expenses incurred by the BWS made necessary thereby.

4. The Contractor shall remove from the site portions of the work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
5. If the Contractor fails to correct nonconforming work **within seven (7) days** of receipt of written notice, or within the time specified in the written notice, the Officer-in-Charge may correct it in accordance with Section 8.2 of these General Conditions. If the Contractor does not proceed with correction of such nonconforming work within the time fixed by written notice from the Officer-in-Charge, the BWS may, at its option, remove the nonconforming work or structure and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay the costs of such removal and storage **within ten (10) days after** written notice, the BWS may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the any consultant services and expenses made necessary thereby. If such proceeds of sale do not cover costs that the Contractor should have borne, the contract shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the BWS.
6. The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the BWS or other contractors caused by the Contractor's correction or removal of work which is not in accordance with the requirements of the Contract.
7. Nothing contained in this subsection shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract. Establishment of the time period of one year as described in Section 4.22 of these General Conditions relates only to the specific obligation of the Contractor to correct work and has no relationship to the time within which the obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct work.

#### **4.6 Quality of Materials and Equipment**

- A. Materials and equipment installed as part of any permanent construction shall be new, unless otherwise specified. The Contract contemplates the use of first-class materials and equipment throughout the performance of the contract, and it is agreed that any material for which no particular specification is given shall be of the highest quality of its class or kind. For the purpose of this subsection, "new" shall mean purchased specifically for the project for which award was made.
- B. Samples. Whenever requested by the Officer-in-Charge, the Contractor shall furnish samples of materials to be used in the performance of the contract. Said samples, if accepted, will be retained by the Officer-in-Charge and shall be used as the standard with which all alike materials furnished under the contract must conform. The acceptance of any sample tested by the Officer-in-Charge or the failure of the Officer-in-Charge to require the furnishing of samples shall not relieve the Contractor from performing the work in accordance with the Contract.
- C. Samples and Test Specimens. When required by the Officer-in-Charge, test specimens

or samples of materials, appliances, and fittings to be used or offered for use in the performance of the Contract shall be prepared and furnished by the Contractor in such quantities and sizes as may be required for proper examination and tests, with information as to their sources. The Contractor shall furnish additional test specimens and samples as directed. Unless the Invitation for Bids specifies otherwise, samples, test specimens, and tests shall be considered incidental to the Contractor's performance of the Contract.

- (1) Test specimens and samples shall be submitted in ample time to enable the Officer-in-Charge to make such tests or examinations as may be necessary. Laboratory tests and examinations made in a laboratory other than that of the BWS shall be at the expense of the Contractor.
- (2) Tests. Tests specified by the Contract, statute, regulation, or ordinance shall be made and the costs thereof shall be borne by the Contractor unless otherwise provided for in such contract, statute, regulation, or ordinance. Such tests shall be conducted under the direction of the Officer-in-Charge and the Contractor shall repair any damage resulting therefrom.
- (3) In addition, the Officer-in-Charge may require such tests as deemed necessary to carry out the Officer-in-Charge's duties during the performance of the work under the Contract. When a test is required by the Officer-in-Charge, the Contractor under the direction of the Officer-in-Charge shall conduct such test and shall bear all of the costs, including the cost of tools, labor, and materials necessary therefor.

#### **4.7 Character of Workers, Methods, and Equipment**

- A. Skilled Workers. The Contractor shall employ, at the Contractor's own expense, all personnel needed to perform the services required under the Contract. These personnel must possess the skill required to properly perform the work under the Contract. The Contractor shall ensure that the Contractor's employees and agents are experienced and fully qualified to engage in the activities and perform the services required under the 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. All workers shall make due and proper effort to execute the work in the manner prescribed in the Invitation for Bids.
- B. When required by the Officer-in-Charge, whose decision shall be final, the Contractor shall replace any employee who lacks the skill to perform the work assigned to the employee or is discourteous or disorderly while performing such work. If acceptable to the Officer-in-Charge, a person who has been so replaced may be assigned other work on the project. Any such acceptance by the Officer-in-Charge shall not relieve the Contractor from performing the work in accordance with the contract.

#### **4.8 Other Contracts**

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

#### 4.9 Wages and Hours

- A. Contractor shall observe and comply with all the provisions of Chapter 104, HRS, relating to wages and hours of employees on public works. The Contractor shall pay all employees on any contract with the BWS the minimum basic wage rate in conformance with applicable Federal and State laws.
- B. Minimum Wages. The minimum wage shall be periodically increased during the performance of the contract in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the State Director of Labor and Industrial Relations. Notwithstanding the provisions of the original contract entered into, if the Director of Labor and Industrial Relations determines that the prevailing wage has increased, the rate of pay of laborers and mechanics on the contract shall be raised accordingly. No additional compensation shall be made to the Contractor for such increases during the duration of the contract.
- C. Overtime Work. No laborer or mechanic employed on the job site shall be permitted or required to work on a Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on a Saturday, Sunday, and a legal holiday of the State or in excess of eight hours on any other day. For purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Director of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborer and mechanics on projects of similar character in the State.
- D. Certified Payrolls and Fringe Benefits. Two (2) certified copies of all payrolls and fringe benefits shall be submitted weekly to the Officer-in-Charge. The Contractor shall be responsible for the submission of certified copies of the payrolls and fringe benefits of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Director of Labor and Industrial Relations and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. The payrolls shall contain the name of each employee, the employee's correct classification, rate of pay, daily and weekly numbers of hours worked on this project as well as hours performed on other projects, deductions made and actual wages paid. The schedule of wages issued by the State Director of Labor and Industrial Relations is incorporated in the Invitation for Bids by reference only. The Manager shall have the authority to withhold payments due or to become due if certified payrolls are not submitted in a timely manner.
- E. Maintain Payroll Records. Payroll and fringe benefit records for all laborers and mechanics working at the site of the work shall be maintained by the Contractor and its subcontractors during the course of the work and preserved for a period of three (3) years thereafter. The records shall contain the name of each employee, the employee's correct classification, rate of pay, daily and weekly numbers of hours worked, deductions made, and actual wages paid.
- F. Availability of Payrolls and Fringe Benefits. The Contractor shall make payroll and fringe benefit records available for examination within ten (10) days from the date of a written request by the BWS, a governmental agency, or any authorized representative thereof. As provided in HRS § 104-22(b), a penalty will be assessed against any Contractor who: (1) fails to make payroll records accessible within ten (10) days; (2) fails to provide information requested for the proper enforcement of this chapter within ten (10) days; or (3) fails to keep or falsifies any record required under this chapter.

- G. Violations. If the Officer-in-Charge finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate, or has not received the laborer's or mechanic's full overtime compensation, the Officer-in-Charge may take appropriate action in accordance with HRS 104-21, or the Contracting Officer may, upon recommendation of the Officer-in-Charge, by written notice to the Contractor, terminate the Contractor's right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such or part by contract or otherwise, and the Contractor and its sureties shall be liable to the BWS for any excess costs occasioned thereby.
- H. Post Wage Schedule. The Contractor is required to post the applicable wage schedule in a prominent and easily accessible place at the job site. The Contractor shall give to each laborer and mechanic employed under the contract a copy of the rates of wages required to be posted.
- I. Federally Funded or Federally Assisted Projects. On federally funded or federally assisted projects, the current federal wage rate determination in effect at the time of advertising for bids is incorporated as part of the contract, and both Federal and State wage rates shall apply. Where rates for any class of laborers and mechanics differ, the higher rates shall prevail. The minimum federal wage rates shall be those in the U. S. Department of Labor Wage Determination Decision and Modifications in effect ten (10) days prior to the bid opening date.  
  
A copy of the wage rate determination, (including any additional classification and wage rate conformed under 29 CFR 5.5a(1)(ii) and Davis-Bacon poster (WH-1321)) shall be posted at all times at the site of work in a prominent and accessible place where it can be easily seen by the workers.
- J. Employee Interviews. The Officer-in-Charge and the State of Hawaii Department of Labor and Industrial Relations may interview employees during working hours on the job. Failure to allow employees to be interviewed may result in the Contractor being assessed penalties described under HRS § 104-22(b).
- K. Failure to Comply. Failure to comply with the requirements of this section may result in disqualification from bidding on future projects.
- L. Inclusion in Subcontract. The Contractor shall include this section in every subcontract for work under this Contract.

#### **4.10 Safety and Health**

- A. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.
- B. Safety Program. The Contractor shall comply with chapter 396, HRS, relating to the standards of occupational safety and health and all applicable Federal, State, and City laws and regulations, including but not limited to section 396-18, HRS, relating to safety and health programs for contractors for BWS construction projects where the bid amount is in excess of \$100,000.
- C. Responsibility. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the

Contractor's superintendent unless otherwise designated by the Contractor in writing to the Officer-in-Charge.

- D. Safeguards; Signs. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including but not limited to posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.
- E. No Loading. The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
- F. Emergency. In an emergency affecting safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury, or loss. The Contractor shall notify the Officer-in-Charge in writing of such emergency and remedial steps taken as soon as reasonably feasible. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 3.3(C) and Section 5.3 of these General Conditions.

#### **4.11 Protection of Pedestrians and Vehicular Traffic; Access to Property**

- A. Unless otherwise specified in the Invitation for Bids, the requirements in this section shall be considered incidental to the Contractor's performance of the contract.
- B. Safe Passage and Access to Site. The Contractor shall employ such methods in the performance of the contract and provide such barriers, guards, temporary bridges, detours, notices, lights, warnings, and other safeguards as may be necessary to prevent injury to persons and property, and to provide safe access to property. The Contractor shall define the line of safe passage with suitable lights, wherever the public may have access to the site of the project, during the hours from one-half hour before sunset to one-half hour after sunrise. All passages and accesses shall be in conformance with the Americans with Disabilities Act and related regulations and guidelines. All traffic controls shall conform to the requirements of the Administrative Rules of Hawaii Governing the Use of Traffic Control Devices at Work Sites On or Adjacent to Public Streets and Highways adopted by the City Director of Transportation Services, Manual of Uniform Traffic Control Devices, U.S. Department of Transportation, Federal Highway Administration, and the current Traffic Code of the City.
- C. Traffic Bridges. The Contractor shall provide proper traffic bridges where necessary so that all streets, roads, lanes, alleys, driveways, and garages will be accessible to traffic at all times. These bridges shall be constructed so that their decks are flush with the pavement, and maintained free from projecting nails, splinters, or rough edges. In lieu of the traffic bridges, the Contractor may use suitable steel plates. The bridges or steel plates shall be able to support all legal highway loads permitted by law and shall have a non-skid surface. Any steel plate edges shall be in conformance with accessibility requirements pursuant to the Americans with Disabilities Act and related regulations and guidelines.
- D. Public and Private Right-of-Way. The Contractor shall provide safe access to property abutting the site of the project when the usual means of access are obstructed by the performance of the contract. The Contractor shall provide free access to water meters, water valves, and abutting public and private property. No material or obstruction of any sort shall be placed within twenty-five (25) feet of any fire hydrant. Fire hydrants must be readily accessible to the fire department at all times. Special attention is called to private and public rights-of-way. Driveways shall be kept open unless the owners of the property



using these rights-of-way are otherwise provided for satisfactorily. During the construction of driveways and driveway ramps, satisfactory access shall be provided by the Contractor for each driveway and driveway ramp. The accesses provided by Contractor shall conform with any and all accessibility requirements pursuant to the Americans with Disabilities Act and related regulations and guidelines.

#### **4.12 Environmental Pollution and Hazardous Materials Control**

- A. Environmental pollution prevention and Hazardous Materials control shall consist of the protection of humans and the environment from pollution during and as a result of construction operations under the contract. The control of environmental pollution and Hazardous Materials requires the consideration of air, water, and land and involves noise, dust, and solid waste management as well as other pollutants. It is the responsibility of the Contractor to investigate and comply with all environmental pollution and Hazardous Materials Laws, including but not limited to those relating to control and abatement. Unless otherwise specified in the Invitation for Bids, the requirements in this section shall be considered incidental to and part of the Contractor's performance of the Contract.
- B. Explosives; Hazardous Materials. When use or storage of explosives or Hazardous Materials or equipment or unusual methods are necessary to perform work, before doing so, the Contractor shall notify the Officer-in-Charge in writing of the nature of the Hazardous Material, its intended use, the intended duration of its presence on the premises, and the method of maintenance on the premises. The Contractor shall exercise utmost care in maintaining and using the explosive or Hazardous Material and carry on such activities under supervision of properly qualified personnel.
- C. Protection of Land Resources. Land resources within the project area and outside the limits of work performed under the Contract shall be preserved in their present condition or be restored to a natural condition that will not detract from the appearance of the surrounding area. Except in areas marked on the drawings to be cleared, the Contractor shall maintain and water trees in the construction area. Except in areas marked on the drawings to be cleared, the Contractor shall not deface, injure or destroy trees or shrubs nor remove or cut them without approval. Any tree or other landscape features scarred or damaged by the Contractor's equipment or operations shall be restored as nearly as possible to its original condition at the Contractor's expense.
- D. Water Pollution. The Contractor shall comply with the provisions of Chapter 54, Water Quality Standards and Chapter 55, Water Pollution Control, of Title 11, Administrative Rules of the State Department of Health during all phases of work. The Contractor shall not pollute water resources including streams and drainage systems with fuel, oils, bituminous materials, calcium chloride, acids, construction wastes, wash waters, or other harmful materials. Surface drainage from cuts and fills, whether or not completed, and from borrow and waste disposal areas shall, if turbidity producing materials are present, be held in suitable sedimentation ponds or shall be graded to control erosion to meet acceptable limits. Objectionable construction discharges shall be processed, filtered, ponded, or otherwise treated prior to their discharge into a waterway or drainage system. Disposal of any material, garbage, oil, grease, chemicals, trash, and other similar materials on areas adjacent to streams or drainage systems shall be subject to the acceptance of the Officer-in-Charge. Such acceptance shall not relieve the Contractor from obtaining permits and meeting any requirements under applicable statutes, ordinances, rules, regulations, or guidelines.
- E. Protection of Fish and Wildlife. The Contractor shall at all times perform all work in such a manner as to prevent any interference with or disturbance to fish and wildlife.

- F. Dust Control. The Contractor shall maintain all excavation, embankment, stockpile, and all other work within or adjoining the project site free from dust that would cause a hazard or nuisance. Sprinkling, chemical treatment, bituminous treatment, or similar methods will be permitted to control dust upon acceptance by the Officer-in-Charge. Sprinkling must be repeated at such intervals as to keep all pavements and disturbed areas at least damp enough to prevent dust nuisance at all times, and the Contractor shall have sufficient sprinkling equipment on the job. Wet cutting shall be required for cement masonry blocks, concrete, and asphaltic concrete pavements unless attachments are used with dry cutting equipment to capture the dust created thereby. All grinding work shall be wet. No dry powder brooming will be permitted in unconfined areas. Vacuuming, wet mopping, wet sweeping, or wet power brooming may be used upon acceptance by the Officer-in-Charge.
- G. Stop Work Hazardous Materials. In the event the Contractor encounters on the site material or substances reasonably believed to be Hazardous Materials that have not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Officer-in-Charge in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the BWS and the Contractor if in fact the material is a Hazardous Material and has not been rendered harmless. The work in the affected area shall be resumed in the absence of any Hazardous Material or when it has been rendered harmless by written agreement by the Board of Water Supply and the Contractor.”
- H. Damages and Loss. Other than damage or loss insured under property insurance required by the Contract, the Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under this section, except damage or loss attributable to acts or omissions of the BWS and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 7.2 of these General Conditions.

#### 4.13 Noise Control

- A. The Contractor shall comply with the provisions of Chapter 46, Community Noise Control for Oahu, of the State Department of Health, Administrative Rules. When required, the Contractor shall obtain a community noise permit.
- B. Construction activities shall not create “excessive noise” when measured at or beyond the property line of the construction site for the hours before 7:00 a.m. and after 6:00 p.m. of the same day.
- C. Construction activities, which emit noise in excess of 95 dBA at or beyond the property line of the construction site, shall be restricted to the hours between 9:00 a.m. and 5:30 p.m. of the same day.
- D. Construction activities, which exceed 95 dBA at or beyond the property line of the construction site, shall be prohibited on Saturdays.
- E. Construction activities that exceed the allowable noise levels at or beyond the property line of the construction site shall be prohibited on Sundays and on the following holidays: New Year's Day, Dr. Martin Luther King, Jr. Day, President's Day, Memorial Day, Kamehameha Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

#### **4.14 Rubbish Disposal**

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

#### **4.15 Restoration and Precautions**

- A. The Contractor shall protect property adjacent to the site of the project from damage and shall immediately restore property damaged by the Contractor to the condition it was in prior to the damage. Unless otherwise specified in the invitation to bids, the requirements in this section shall be considered incidental to the Contractor's performance of the Contract.
- B. Buildings and Other Structures. If the site of the project passes close to or under buildings and other structures, the Contractor shall protect all such buildings and structures by suitable means from any and all damages.
- C. Dewatering
  - 1. The Contractor shall be responsible for the water and its control and disposal during the construction of all work covered by the contract. Dewatering shall be accomplished by suitable means. The Contractor shall repair any and all damages to property including buildings, retaining walls, etc., resulting from such dewatering operation to the satisfaction of the owners of such property. Dewatering shall be prohibited in areas subject to substantial damages to adjacent buildings and properties resulting from settlement due to dewatering.
  - 2. All concrete pours shall be dewatered in accordance with applicable sections of the standard specifications.
  - 3. The Contractor shall construct and maintain all cofferdams, drains, sumps, temporary diversions, and protective works; and shall furnish, install, maintain and operate all necessary pumping and other equipment for dewatering the various parts of the work, regardless of the source of water. The Contractor shall maintain a water-free foundation to properly perform the items of work and as directed by the Officer-in-Charge. The Contractor shall maintain the work free from water for at least six hours following the placement of each unit of concrete, concrete unit masonry, or concrete rubble masonry. All temporary protective works shall be removed in a manner satisfactory to the Officer-in-Charge.
- D. Pavement, Curb, and Gutter. The Contractor shall replace, restore, and repair, in accordance with the City & County of Honolulu's standard specifications, pavements, gutters, and curbs damaged or removed by the Contractor.
- E. Fences. The Contractor shall replace fences removed by the Contractor. Precautions shall be taken to prevent livestock from escaping when fences enclosing them are removed.
- F. Grass. When trenching disturbs lawns, the area over the trench shall be carefully graded and replanted with similar grass spaced over the trench substantially similar to the condition it was in prior to the excavation.
- G. Trees and Shrubbery. Trees and shrubbery, which must be disturbed, shall be transplanted under the direction of the owner or lessee of the property to some other site and, upon completion of the backfill, shall be replanted on the original site, to the satisfaction of the said owner or lessee.

- H. Property Marks. The Contractor shall reference and replace marks, stakes, pipes, monuments of the property line, and similar objects that may be disturbed by the Contractor while performing the contract. A surveyor licensed by the State of Hawaii shall certify any such replacements.
- I. Sidewalks, Patios, Driveways, and Other Like Concrete Construction. When trenches are to be made across concrete sidewalks, patios, driveways, and other like concrete construction, the Contractor shall make neat cuts in the concrete with pavement saws, or other means acceptable to the Officer-in-Charge, and shall thoroughly compact the backfill and reconstruct such construction with concrete similar to the existing construction.
- J. Topsoil. Where private land under cultivation is disturbed, the Contractor shall place the upper twelve inches of topsoil to one side, which shall not be mixed with the general excavated material. After backfill has been made to within twelve inches of the surface, the topsoil shall be replaced.
- K. Excavated Material. Unless otherwise specified, all excavated material shall become the property of the Contractor and shall be hauled from the jobsite to a disposal site acceptable to the Officer-in-Charge. Hauling of wet, dripping material over public streets is not permitted.
- L. Walls, Rock, and Masonry. The Contractor shall replace rock and masonry walls removed by the Contractor.

#### **4.16 Historical and Archaeological Finds**

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

#### **4.17 Maintenance of Site and Final Cleanup**

- A. The requirements in this section shall be considered incidental to the Contractor's performance of the Contract.
- B. Maintenance of Site. The Contractor shall maintain the site of the project in an orderly and clean condition and shall, at suitable intervals and upon completion of each phase of the project, remove accumulations of rubbish or refuse materials, surplus concrete, mortar, and excavated materials not required or suitable for backfill. Washings from concrete mixers or mixing boxes shall not be deposited in the drainage or sewer system of the City or on paved streets. The Contractor shall keep the project and surrounding area neat and free of dirt and dust by periodic blading, power brooming, watering, or other approved means.
- C. Removal. Upon completion and before final acceptance by the Officer-in-Charge of the work performed under the contract, the Contractor shall remove rubbish, surplus or discarded materials, falsework, forms, temporary structures, field offices, project signs, signs not a part of the project, and Contractor's equipment and machinery, and shall leave the site and ground occupied by the Contractor in connection with the performance of the contract in an orderly and clean condition. Buildings constructed, altered, or worked in by the Contractor in the performance of the contract shall be left "broom clean", and stains and other blemishes resulting from the Contractor's operations, such as dropped or splattered concrete or mortar and paint, shall be removed from floors, walls, ceilings, windows, and all other exposed surfaces.

#### **4.18 Laws; Regulations**

- A. Contractor shall keep itself fully informed of all laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights-of-way, and all changes thereto, that in any manner affect the Contract and the performance thereof. Contractor shall comply with all such laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights-of-way, including the giving of all notices necessary and incident to the proper and lawful prosecution of the work, and all changes thereto. If any discrepancy or inconsistency is discovered between the Contract and any such law, ordinance, code, rule, regulation, design standard, design criterion, governmental general and development plans, setback limitation, or rights-of-way, Contractor shall forthwith report the same in writing to the Officer-in-Charge. Laws, regulations, and ordinances that affect the Contract and the performance thereof, include but are not limited to:
1. Chapter 103, HRS, relating to expenditure of public money;
  2. Chapter 103D, HRS, relating to Hawaii procurement code;
  3. Chapter 104, HRS, relating to wages and hours of employees on public works;
  4. Chapter 378, HRS, relating to fair employment practices;
  5. Chapter 386, HRS, relating to worker's compensation;
  6. Chapter 396, HRS, relating to occupational safety and health; and
  7. Chapter 444, HRS, relating to licensing of contractors.
- B. The Contractor shall comply with all such present and new laws, regulations, and ordinances, including the giving of all notices necessary and incident to the performance of the contract. If any discrepancy or inconsistency is discovered between the contract and any such law, regulation, or ordinance, the Contractor shall forthwith report the same in writing to the Contracting Officer or the Officer-in-Charge.

#### **4.19 Partial Acceptance of Project**

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

#### **4.20 Responsibility of the Contractor Prior to Acceptance**

- A. The Contractor shall repair, reconstruct, restore, and replace the work or any part thereof that is injured, damaged, or vandalized prior to acceptance of the work by the Officer-in-Charge, by any cause whatsoever, except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God, such as earthquakes, tsunamis, lava flows, and acts of the public enemy or governmental authorities.
- B. Occupancy Prior to Acceptance. The BWS may occupy or use any completed or partially completed portion of the work at any stage prior to acceptance when such portion is designated by separate agreement with the Contractor, provided such occupancy or use

is consented to by the Contractor's insurer. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the BWS and the Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, air conditioning, utilities, damage to the project, and insurance, and have agreed in writing concerning the period for correction of work and commencement of the guarantee required by the contract. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.

- C. Inspection. Immediately prior to such partial occupancy or use, the Officer-in-Charge and Contractor shall jointly inspect the area to be occupied or used in order to determine and record the condition of the area.
- D. No Acceptance of Non-Complying Work. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the project shall not constitute acceptance of work not complying with the requirements of the Contract.

#### **4.21 Final Inspection**

- A. Before notifying the Officer-in-Charge that the project is substantially complete, including compliance with Section 4.17 of these General Conditions, the Contractor shall inspect the project and test all equipment with all of its subcontractors. The Contractor shall also proceed to obtain the documents required under the Contract, including but not limited to:
  - 1. All written warranties and guarantees;
  - 2. All "as-built" drawings;
  - 3. All certified payroll affidavits if not submitted earlier;
  - 4. Certificate of plumbing and electrical inspection;
  - 5. Certificate of building occupancy (if required);
  - 6. Certificate of soil and wood treatments (if required);
  - 7. Certificate of water system chlorination (if required);
  - 8. Maintenance service contract (if required);
  - 9. Two (2) copies of a list of all equipment installed; and
  - 10. All operating and maintenance manuals for equipment installed.
- B. "Substantial completion" and "substantially complete" mean:
  - 1. All utilities are connected and in working condition;
  - 2. All air conditioning and other major equipment are in acceptable working condition; and
  - 3. The building, structure, improvement, or site can be used for its intended purpose.
- C. After finding everything in order, the Contractor shall notify the Officer-in-Charge in writing that the project is substantially complete and ready for inspection.
- D. The Officer-in-Charge shall then make a determination as to whether the project is ready

for inspection. If the Officer-in-Charge is not satisfied, the Contractor will be notified in writing of the items that require completion prior to inspection. After the Contractor complies with the Officer-in-Charge's instructions, the Contractor shall again submit, in writing, a request for inspection.

- E. When the Officer-in-Charge determines that the project is substantially complete, a pre-final inspection will be conducted by the Officer-in-Charge along with representatives of other City agencies interested in the project, within seven (7) days of receipt of the request from the Contractor.
- F. If the pre-final inspection discloses only minor discrepancies, the Officer-in-Charge shall accept the project as substantially complete and issue in writing a list of the discrepancies that need to be corrected, including all documents required by the Contract, hereinafter referred to as the "Punch List," and the time in which the Contractor must complete the Punch List. The date of acceptance of the project as substantially complete shall signify the end of the contract completion time.
- G. The Contractor shall, **within seven days (7)** after receipt of the Punch List, proceed to complete the items on the Punch List. Upon completion, the Contractor shall submit a written request for a final inspection, after which, if the Officer-in-Charge finds that all discrepancies are satisfactorily corrected, the Officer-in-Charge will accept the project as completed, hereinafter referred to as "final acceptance".
- H. Noncompliance. If the Contractor fails to complete the Punch List within the specified times, the Officer-in-Charge may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefor. The BWS shall be entitled to reasonable attorneys' fees, consultants' fees, and costs necessarily incurred by the Contractor's refusal to complete the Contract and to pay such costs of corrective work.
- I. Upon final acceptance, the Contractor shall be relieved of its responsibility to maintain and protect the work and site and for injury to persons or property. Release of final payment shall be as specified in Section 6.5 of these General Conditions.
- J. Prior to release of final payment, the Contractor shall submit, **within thirty (30) days after** final acceptance, or within such time as the Officer-in-Charge may allow, all remaining documents required by the Contract.

#### **4.22 Guarantee**

- A. This guarantee shall be deemed supplemental to any guarantee or warranty provisions provided in other sections of the Contract or of the specifications for the individual units and systems of units so specified.
- B. Performance. The Contractor guarantees its performance and the performance of its subcontractors under the Contract.
- C. Materials and Equipment. The Contractor also guarantees all materials and equipment furnished or installed under the Contract against defects and poor workmanship and to be in operable condition upon final acceptance of the work or portions of the work, and that all such materials and equipment conform to the requirements of this contract and are fit for the use intended.
- D. Design. When the Contractor is responsible for the design, the Contractor guarantees the design to meet the criteria and operating requirements specified and against failure to perform in accordance with such criteria and operating requirements.

- E. Guarantee Period. Unless otherwise specifically stated in the Invitation for Bids that a longer period is intended, the guarantee shall commence upon final acceptance of the work by the Officer-in-Charge and shall extend for a period of one year. The warranty period for all aspects of trench restoration shall be for two (2) years. The Officer-in-Charge may also determine that the guarantee period commences upon acceptance of the material or equipment installed or work performed. Furthermore, this period shall be extended from the time of correction of any defect or failure, corrected under the terms of this guarantee, for a like period of one year. The Contractor shall provide a new certificate of guarantee for the extended one (1) year period.
- F. Correction. The Contractor shall correct all defects or failures discovered within the guarantee period. The BWS will give the Contractor prompt written notice of such defects or failures following their discovery. The Contractor shall commence corrective work **within seven (7) calendar days** following notification and shall diligently prosecute such work to completion. The Contractor shall bear all costs of corrective work, which shall include necessary disassembly, transportation, reassembly and retesting, as well as repair or replacement of the defective materials or equipment and any necessary disassembly and reassembly of adjacent work.
- G. Noncompliance. If the Contractor fails to perform corrective work in the manner and within the time stated, the BWS may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefor. The BWS shall be entitled to reasonable attorneys' fees, consultants' fees, and costs necessarily incurred by the Contractor's refusal to complete the contract and to pay such costs of corrective work.
- H. Performance Bond. Unless otherwise specifically stated in the Invitation for Bids that a longer period is intended, the performance bond shall be in full force and effect for the duration of the contract and for a period of one year after final acceptance of the contract by the Officer-in-Charge.
- I. Rights and Remedies. The rights and remedies of the BWS under this provision do not preclude the exercise of any other rights or remedies provided by this Contract or by law with respect to unsatisfactory work performed by the Contractor.

**4.23 Joint Contractor; Subcontractor; Assignments**

- A. The Contractor shall comply with HRS 103D-302, relating to the listing of joint contractors or subcontractors.
- B. Specialty Work. Joint contractors and subcontractors may perform only the specialty work for which they are listed.
- C. Changes. The Contracting Officer, upon recommendation by the Officer-in-Charge, or for informal bids, the Officer-in-Charge alone, may allow changes to the original listing of joint contractors and subcontractors only if justified by the Contractor based on one of the following reasons:
  1. The joint contractor or subcontractor files a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy that is not dismissed within ten (10) days of filing;
  2. The joint contractor or subcontractor is not performing in accordance with the subject contract;
  3. The joint contractor or subcontractor is to perform additional work for which a



joint contractor or subcontractor was not required to be listed in the bid proposal;  
or

4. Any other reason that the Contracting Officer or the Officer-in-Charge may consider justified.

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

#### **4.24 Employment of State Residents on Construction Procurement Contracts**

- A. Contractors are advised of the applicability of Chapter 103B, HRS, as amended by Act 192, SLH 2011, Employment of State Residents on Construction Procurement Contracts, ("HRS Chapter 103B"). HRS Chapter 103B requires the awarded Contractor to ensure that Hawaii Residents (as defined in the statute) compose not less than eighty percent of the workforce employed to perform the contract. This requirement shall apply to subcontracts of \$50,000 or more in connection with any construction contract procured under HRS Chapter 103D, but does not apply to procurements made pursuant to HRS §103D-304 (professional services), Section 103D-305, HRS (small purchases), or if there is a conflict with any federal law.
- B. Definitions for terms used in HRS 103B
  1. "Resident" means a person who is physically present in the state at the time the person claims to have established the person's domicile in the state and shows the person's intent is to make Hawaii the person's primary residence.
  2. "Shortage trade" means a construction trade in which there is a shortage of Hawaii residents qualified to work in the trade.
- C. Requirements of Contractor. The Contractor awarded this contract shall ensure that Hawaii Residents compose not less than eighty per cent of the workforce employed to perform this Contract, calculated as follows:
  1. The eighty per cent requirement shall be determined by dividing the total number of hours worked on a contract by Residents by the total number of hours worked by all employees of the Contractor in the performance of the Contract. Hours worked for any subcontractor of the contractor shall count towards the calculation for purposes of this subsection. The hours worked by employees within shortage trades, as determined by the Department of Labor and Industrial Relations, shall not be included in the calculations for purposes of this subsection.2. A notarized Certification for Employment of State Residents on Construction Procurement Contracts shall be submitted with the notice of completion of the contract.
  3. Prior to award of a contract, an Offeror/Bidder may withdraw an offer/bid without penalty if the Offeror/Bidder finds that it is unable to comply with HRS Chapter 103B.
- D. Penalties. Failure to comply with this requirement shall be subject to any of the following sanctions:

1. Withholding of final payment on the Contract or subcontract, as applicable, until the Contractor or subcontractor complies with Section 103B-3(a), HRS;
  2. Proceedings for debarment or suspension of the Contractor or subcontractor under Section 103D-702, HRS.
- E. Conflict with federal law. HRS Chapter 103B shall not apply if the application of the chapter is in conflict with any federal law, or if application of the chapter will disqualify the City from receiving federal funds or aid.

## ARTICLE 5 – TIME AND DELAYS

### 5.1 Time

Time is of the essence of the contract. Performance of the Contract shall be commenced on the commencement date designated in the notice to proceed and shall be completed within the number of days specified in the Contract.

### 5.2 Overtime Work

- A. Written Request. If the Contractor wishes to work at such time of the day that is during the period other than the regular business hours of BWS, or on a Saturday, Sunday, or legal State holiday, the Contractor shall make a written request for inspection services during such period.
- B. Notice. If such a request is made and granted, the Contractor shall notify the Officer-in-Charge not less than twenty-four (24) hours in advance of the time when such inspection services are required. The Contractor shall pay the BWS in accordance with section 41-20.1 Revised Ordinances of Honolulu 1990, as amended, at the rate for the current year set by the Director, Department of Budget and Fiscal Services, or in the event the BWS has retained a private construction manager, the Contractor shall pay the rate established by the private construction manager.
- C. Invoice.
  1. BWS inspector. The BWS shall invoice the Contractor for overtime inspection services rendered by BWS inspectors.
  2. Private construction manager. The private construction manager will invoice the Contractor at the construction manager's established rate for overtime inspection. A copy of the invoice shall be provided to BWS.

### 5.3 Delay; Time Extensions

- A. Permits. For delays in obtaining the necessary building and/or grading permits which are extraordinary and beyond the control of the Contractor and will result in a delay of the commencement of work, the Contractor may be granted a reasonable extension of time for the performance of the contract corresponding to the delay, provided the Contractor notifies the Officer-in-Charge **immediately** upon first encountering the delay. The Contractor shall keep the Officer-in-Charge informed as to the estimated length of the requested delay.
- B. Increases in Scope of Work. For increases in the scope of work caused by alterations and additional work under Section 3.3 of these General Conditions, the Contractor will be granted an extension of time only if the changes are on the critical path and affect the

final completion date of the contract. If the Contractor feels that an extension of time is justified, the Contractor must request it in writing when submitting the detailed cost breakdown for the change order. The Contractor must show how the final completion date will be affected based on the progress of the project and must also support the claim with schedules and statements from its subcontractors, suppliers, and/or manufacturers as to the extent of the delay.

C. Delivery of Materials and Equipment

1. For delays in delivery of materials and equipment, which occur as a result of unforeseeable causes beyond the control and without fault, or negligence of both the Contractor and subcontractors or suppliers, the Contractor may be granted a reasonable extension of time provided that the Contractor complies with the procedures herein. No extension of time will be considered unless the material and equipment were ordered at the earliest possible date.
2. No extension of time shall be granted for a delay caused by a shortage of materials unless the Contractor, **within ten (10) days** from the beginning of the delay (unless the Officer-in-Charge grants a further period of time before the date of final payment under the contract), notifies the Officer-in-Charge in writing of the delay and submits proof that the Contractor has diligently made every effort to obtain the materials from all known sources, and further proof that the inability to obtain the materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations.
3. The extent of delay must be substantiated as follows:
  - a. The Contractor must state specifically the reason or reasons for the delay. The Contractor must also explain, as necessary, the effect of this delay on the other trades and on the specified completion date of the project.
  - b. The Contractor must list and specify the dates of the pertinent chronological events for the project, which shall include, but not necessarily be limited to, the following:
    - i. Notice to proceed;
    - ii. Sample or shop drawing submittal;
    - iii. Sample or shop drawing return;
    - iv. Purchase order;
    - v. Factory shipment;
    - vi. Arrival of ship;
    - vii. Delivery to job site;
    - viii. Material installation;
    - ix. Specified completion of project;
    - x. Actual completion of project; and

- xi. Pertinent correspondence, telegrams, meetings, and telephone conversations.
    - c. The Contractor must submit copies of purchase orders, factory invoices, bills of lading, shipping manifests, delivery tags, and any other pertinent correspondence as evidence to support the delay.
    - d. The Contractor must cite the period of delay and the number of days requested therefor. The period of delay shall not exceed the difference between the originally scheduled delivery date at the job site versus the actual delivery date.
- D. Force Majeure. If any delay in the completion of the work arises from causes such as acts of God; acts of the public enemy; acts of the BWS, the City, or any other governmental entity in either a sovereign or contractual capacity; acts of another contractor (but not the Contractor's subcontractor) in the performance of a contract with the BWS; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; or delays of subcontractors due to causes similar to those set forth above, then the Contractor shall be granted a reasonable extension of time provided that:
  - 1. The Contractor shall notify the Officer-in-Charge in writing, **within ten (10) days** from the commencement of the delay (unless the Officer-in-Charge grants a further period of time before the date of final payment under the contract), of the causes of the delay and the possible effects such circumstances may have on the completion date of the Contract. Upon becoming aware of the extent of any such delay, the Contractor shall immediately inform the Officer-in-Charge in writing.
  - 2. The extent of any delay must be substantiated as follows:
    - a. The Contractor must state specifically the reason or reasons for the delay. The Contractor must also explain, as necessary, the effect of this delay on the other trades and on the specified completion date of the project;
    - b. The Contractor must list and specify the dates of the pertinent chronological events for the project, which shall include, but not necessarily be limited to, the following:
      - i. Notice to proceed;
      - ii. Sample or shop drawing submittal;
      - iii. Sample or shop drawing return;
      - iv. Purchase order;
      - v. Factory shipment;
      - vi. Arrival of ship;
      - vii. Delivery to job site;
      - viii. Material installation;

- ix. Specified completion of project;
    - x. Actual completion of project; and
    - xi. Pertinent correspondence, telegrams, meetings, and telephone conversations.
  - c. The Contractor must submit copies of purchase orders, delivery tags, and any other pertinent correspondence as evidence to support the delay;
  - d. The Contractor must cite the period of delay and the number of days requested therefor; and
  - e. The Contractor must submit a statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.
- E. Other Work. For Sections 8.1(B), 8.1(C), 8.1(D) of these General Conditions, the Officer-in-Charge shall have the option of extending the contract time for only that portion of the work affected by the delay. If the Officer-in-Charge exercises this option, the Contractor shall defer work in the areas approved by the Officer-in-Charge and complete the remaining work within the time specified in the contract.
- F. Suspension
- 1. When the performance of work is totally suspended by the Officer-in-Charge for one or more days in accordance with paragraphs (1), (3), (4), or (5), of Section 8.1(A) of these General Conditions, the contract completion date shall be revised accordingly.
  - 2. During periods of partial suspensions of the work, the Contractor will be granted an extension only if the partial suspension affects the final completion date of the contract. If the Contractor feels that an extension of time is justified, the Contractor must request it in writing **at least five (5) working days before** the partial suspension will affect the critical operations in progress. The Contractor must show how the final completion date will be affected based on the progress of the project and must also support his claim with statements from his subcontractors.
- G. Evaluation. The Officer-in-Charge shall evaluate all time extension requests and shall ascertain the facts and extent of the time involved and the Officer-in-Charge's findings of the facts thereof shall be final and conclusive.

No time extension will be considered for the following:

- 1. Delays or suspension of work due to the fault of the Contractor, including the causes listed in Section 8.1(A)(2) of these General Conditions;
- 2. Delays in arrival of materials and equipment due to the fault of the Contractor, its subcontractor, or supplier in ordering, fabricating, delivery, etc.;
- 3. Delays caused by changes which the Officer-in-Charge determines unjustifiable due to the lack of supporting evidence or because the change is of such nature that the final completion date will not be affected;

4. Delays caused by the failure of the Contractor to submit, on a timely basis, for approval by the Officer-in-Charge, shop drawings descriptive sheets, material samples, color samples, etc. except as covered in Sections 5.3(C) or 5.3(D) of these General Conditions;
  5. Failure to submit requests for clarification on a timely basis to avoid impacting the project schedule; and
  6. Delays of weather unless unusually severe weather, or unless determined by the Officer-in-Charge to be justified.
- H. Additional Rights and Remedies. The rights and remedies of the BWS provided in the Contract are in addition to any other rights and remedies provided by law.

## ARTICLE 6 - PAYMENT

### 6.1 Force Account

- A. When the Contractor and the Officer-in-Charge cannot agree to the price adjustment of any change in work, the Officer-in-Charge may, in accordance with Section 3.3(E)(6) of these General Conditions, require that the work be performed under force account until such time that an equitable adjustment can be agreed to by both parties, provided that the Officer-in-Charge promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. Payment for work under force account shall be as set forth in this Section 6.1 of the General Conditions.

- B. Allowable Costs. In force account, cost shall be the sum of the costs of the following:

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

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

An amount not to exceed fifteen percent (15%) of the actual labor cost will be paid the Contractor.

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

2. Insurance and Tax. The Contractor will receive the projected average rate for the required insurance including property damage (excluding builder's risk), liability, workers compensation insurance premiums, State unemployment

contributions, Federal unemployment taxes, social security, and Medicare taxes to which six percent (6%) may be added. The Contractor shall submit the projected average rate for taxes and insurance premium for the applicable current year for acceptance by the Officer-in-Charge.

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

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

An amount not to exceed fifteen percent (15%) of the total cost of materials will be paid the Contractor.

4. Machinery and Equipment, Other Than Small Tools and Minor Equipment, Which May be Necessary or Desirable to Perform the Work

- a. The Officer-in-Charge may reject any machinery or equipment that the Officer-in-Charge deems unnecessary, inefficient, or inadequate for the work to be performed. The term "small tools and minor equipment" shall include individual equipment or tools having a replacement value of two hundred fifty dollars (\$250.00) or less, whether or not they are consumed in the use thereof.
- b. The rate shall be the per-hour rental rate based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Blue Book for Construction Equipment, including the estimated operating cost per hour and regional correction provided therein. The hourly rate will be determined by dividing the monthly rate by one hundred and seventy-six. The rate includes the estimated operating cost per hour and the regional correction factor. If no rate is listed for a particular kind, type, or size of machinery or equipment, then the monthly, hourly rate shall be as agreed upon in writing by the Contractor and the Officer-in-Charge prior to the use of said machinery or equipment. The Contractor shall provide proof of the rental rates charged.
- c. For trucks not owned by the Contractor, rental rates established under the Hawaii State Public Utilities Commission will be used to determine the cost and will be paid for as a material item under Section 6.1(B)(3) of these General Conditions.
- d. For Contractor-owned trucks not listed in the Rental Rate Blue Book, the rates shall be as agreed upon in writing by the Contractor and the Officer-in-Charge prior to the use of said trucks.
- e. Rental rates which are higher than those specified in the Rental Rate Blue Book may be allowed where such higher rate can be justified by job conditions such as work in water, on lava, etc. Request for higher rate shall be submitted in writing to the Officer-in-Charge for approval prior to the use of the machinery or equipment in question.

- f. All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.
5. Transportation and/or Mobilization
- a. The location from which the equipment is to be moved or transported shall be approved by the Officer-in-Charge.
  - b. Payment will be made for mobilizing and transporting the equipment or machinery to the force account work site, including loading and unloading, and back to its original location or other site, whichever cost is less. The cost of transportation shall not exceed the rates established by the Hawaii State Public Utilities Commission. If rates are nonexistent, then the rates will be determined by the Officer-in-Charge based upon the prevailing rates charged by established haulers within the locale.
  - c. Payment for self-propelled equipment or machinery will be for the cost of moving the equipment by its own power to the force account work site and back to the original location or other site, whichever cost is less.
  - d. When transporting equipment or machinery by other than its own power, payment shall be made for the transporter, if owned by the Contractor, at the hourly rate including the estimated operational rate and the applicable regional correction factor. Payment for the transporter, if not owned by the Contractor, shall be by invoice cost and paid for as a material item. Payment for the equipment or machinery shall be at the rate of "idle time" under Section 6.1(B)(9) of these General Conditions.
  - e. Payment for mobilization and transportation will not be made if the equipment or machinery is used on the work in any other way than upon extra work paid for under force account.
6. Bond. A bond allowance up to one percent (1%) will be added to the total sum of paragraphs (1) through (5).
7. State Excise Tax. State excise tax not to exceed 4.712% will be added to the total sum of paragraphs (1) through (6).
8. When work is performed by a subcontractor who has been approved pursuant to Section 4.23 of these General Conditions, the Contractor will receive an additional amount equal to seven percent (7%) of the total cost of paragraphs (1) through (6), to which there shall be added the State excise tax.
9. Rental Period
- a. Idle Time. Idle time herein means the period in which the machinery or equipment designated for the specific force account work is not in use for the work. The time period shall be for a working day (8 hours). Payment shall be fifty percent (50%) of the hourly rate excluding the estimated operational cost per hour per working day.
  - b. Standby Time. Standby time herein means the period in which the machinery or equipment is standing by for the specific force account workday. A workday shall not exceed eight hours (standby time plus the operating time) unless the Officer-in-Charge authorizes the overtime.



Payment shall be at the hourly rate, including the estimated operational cost per hour per working day.

- c. The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work, and shall terminate at the end of the day on which the Officer-in-Charge directs the discontinuance of the use of the machinery or equipment.
- d. Less than thirty minutes of operation will be considered a half-hour of operation.
- e. Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours that the machinery or equipment was in operation.
- f. When force account work is completed within less than 8 hours, payment shall be for 8 hours.
- g. For the purpose of determining the rental period, the continuous and consecutive days shall be the normal 8-hour shift work day, Monday through Friday excluding Saturday, Sunday, and legal holidays. Any workday to be paid less than 8 hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.
- h. Overtime shall be paid for each hour in excess of the normal 8-hour shift workday at the corresponding hourly rate for daily, weekly, and monthly rates.

10. Percentages for Fee and Overhead. Payment for actual costs for overhead and profit shall be made in accordance with the provisions of Section 103D-501(b)(5), HRS, and applicable sections of Chapters 3-122, 125, and 126, HAR.

- C. Payment for the above shall be deemed payment in full for work done under force account including superintendence, overhead, use of tools, machinery, and equipment for which no rental is allowed, profit, taxes, subcontracting, and other costs in connection therewith which are not provided for herein. **No payment will be made until itemized records along with receipted invoices and appropriate documents have been submitted and approved.**
- D. Records. The Contractor shall submit records of the above to the Officer-in-Charge at the end of each day on Daily Force Account Report sheets (Form DF-49) issued by the Officer-in-Charge. Such records submitted, shall be subject to the approval of the Officer-in-Charge as evidenced by the Officer-in-Charge's signature thereon. The Contractor shall submit a statement covering the cost of all of the above items not later than the tenth day of the month following the month in which the costs were incurred.

## 6.2 Payment

- A. Original Invoices Required. All payments under the Contract shall be made only upon submission by the Contractor of original invoices specifying the amount due and certifying that the services stated in the invoice have been performed by the Contractor in accordance with the Contract.

- B. The Contractor shall be paid the contract price as full compensation for the performance of the Contract. Should there be a discrepancy between the basis of payment outlined in the standard specifications and that called for in the Contract, the Contract shall govern. If an error, omission, or misstatement shall be discovered in the quantities or measurements stated in the Contract, the same shall not vitiate the contract, or release the Contractor or his surety or sureties from performing the contract, or affect the price agreed to under the contract, or excuse the Contractor from any of the obligations or liabilities under the contract, or entitle him to damages or compensation, except as provided herein.
- C. Lump Sum Contracts. For lump sum contracts, the contract price shall be the result obtained by first reducing the amount designated as the total sum bid in the award by the amount included therein for allowances and contingencies, and adding thereto or deducting therefrom any extra cost or any reduction in cost, respectively, to the BWS as a result of supplemental agreements in writing and written orders.
- D. Unit Priced Items. Payment shall be made for the actual quantities of units incorporated into the contract multiplied by the unit prices of the contract items, provided that where the quantity of any item varies more than fifteen percent (15%) above or below the estimated quantity stated in the contract, payment shall be made at the adjusted unit price in accordance with Section 3.3(G) of these General Conditions.
- E. Allowance Items. Payment for allowance items shall be included in the monthly estimate for progress payment upon submittal of paid invoices. Payment requests for all reimbursable expenses shall be accompanied and supported by receipted invoices for all charges. The BWS must approve of all reimbursable expenses in writing. Payment for reimbursable items shall be made for allowable costs in accordance with the Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Chapter 3-122, Subchapter 15, cost or pricing data, and Chapter 3-123, cost principles.
- Reimbursable amounts stated in the Contract shall not be exceeded without a contract amendment. Any balance remaining from the reimbursable expense funds at the completion of the Contract shall revert to the BWS. Unless otherwise specified in the Invitation for Bids, the Contractor shall be reimbursed from the allowance items as follows:
1. For utility allowance, no markup of any kind will be allowed.
  2. For off-duty police officers, the reimbursement shall also include the administrative fees charged by the Honolulu Police Department, plus twenty percent (20%) inclusive of any administrative costs, overhead/profit, bond fee, and applicable taxes.
- F. Mobilization. Mobilization will be paid for on a lump sum basis. Partial payments will be made as follows:
1. When five percent (5%) of the total sum bid is earned, fifty percent (50%) of the amount bid for mobilization will be paid;
  2. When ten percent (10%) of the total sum bid is earned, seventy-five percent (75%) of the amount bid for mobilization will be paid; and
  3. When twenty percent (20%) of the total sum bid is earned, one hundred percent of the amount bid for mobilization will be paid.

Nothing herein shall be construed to limit or preclude partial payments otherwise

provided for by the Contract.

### **6.3 Payments During Performance of Work**

- A. Monthly Estimate and Payment. The Officer-in-Charge shall, not later than the fifteenth day of each month during the performance of the Contract, make an estimate of the amount of work completed in accordance with the contract during the immediately preceding month for the construction items listed in the performance schedule described in Section 4.1(D) of these General Conditions. In arriving at an estimate of work completed during the month, the Officer-in-Charge shall deduct sufficient allowance for any incomplete or unprotected work or to provide for any contingencies for remedy of defects or damage to said work or for the necessity of performing any part of the work over again to cure defects or damage.
- B. Retention for Satisfactory Progress. Pursuant to HRS §103-32.1, if the Officer-in-Charge finds that satisfactory progress is being made:
1. Prior to the first fifty percent (50%) of the work under the Contract having been performed in a satisfactory manner, progress payments to the Contractor for the work completed for the month shall be for a sum equal to ninety-five percent (95%) of the above estimate (after accounting for any deductions and contingencies), less previous payments and sums withheld by the BWS pursuant to Section 6.3(A) of these General Conditions.
  2. After the first fifty percent (50%) of the work to be performed under the Contract has been completed and progress is satisfactory, progress payments will be for one hundred percent of the above estimate less:
    - a. Five percent (5%) withheld from the previous payments to the Contractor during the performance of the first fifty percent (50%) of the work required under the Contract;
    - b. Other sums withheld by the BWS pursuant to the Contract; and
    - c. Previous payments.
  3. For federally funded contracts, the amount of retainage shall be the amount allowed by federal regulations.
- C. Unsatisfactory Progress. The Officer-in-Charge may continue to make progress payments to the Contractor for a sum equal to ninety-five percent (95%) of the above estimates, less previous payments and sums withheld by the BWS pursuant to the Contract until such time as the Contractor achieves satisfactory progress.
- D. Delay in Completion of Work. Upon written request from the Contractor, if the completion of the work under the contract is being delayed through no fault of the Contractor, the Contractor may request the release of all or part of the amount withheld. The Contracting Officer, upon recommendation of the Officer-in-Charge, may make additional payments from the amount withheld to the extent that such amount withheld is not required for the protection of the BWS. The Contracting Officer may require the Contractor to submit tax clearances from the State and Internal Revenue Service and surety clearance as a condition to the release of any retention.
- E. Substitution with General Obligation Bonds. The Contractor may request, and the Contracting Officer, upon recommendation of the Officer-in-Charge, may enter into, an agreement to allow the Contractor to withdraw from time to time the whole or any portion

of the sums retained as set forth above upon depositing with the Contracting Officer any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the Contracting Officer may require that the total market value of such bond be greater than the sum to be withdrawn.

#### **6.4 Payment for Delivered Materials and Equipment**

- A. No payment for any material or equipment that is affixed, movable or removable, delivered to the site of the work under the contract will be made until said material or equipment is incorporated into the parts of the project required to be constructed under the contract. Payment for the delivered material or equipment shall be included in the monthly progress payment under the appropriate cost item. Each progress payment shall include the completed "Report of Equipment Purchased with Construction Contracts". Whenever payment is requested for delivered equipment that is movable or removable, two copies of the list of such equipment must be attached to the report. The list shall include the equipment description, make, model, serial number, quantity, cost, an indication of whether or not the equipment is movable or removable, and the specific location of the equipment such as the room number. The amount included for payment under this subsection shall be subject to the retention requirement. Approval of progress payment shall be contingent upon the submission of the report and the equipment list.
- B. Specialized or Special Ordered Materials and Equipment. The Officer-in-Charge may, to the extent provided for in the contract, include in the monthly estimate for progress payment the delivered cost of specialized materials, special ordered materials, or equipment usable only for the contract. Such inclusion in the monthly estimate will be allowed only if all costs are substantiated by evidence of delivery and payment, and only for such materials or equipment as are specifically described or referred to in the contract as being the subject matter for such inclusion in the monthly estimate for progress payment. The progress payment shall include the "Report of Equipment Purchased with Construction Contracts" and a list of the movable and removable equipment as described in Section 6.4(A) of these General Conditions. Payment to the Contractor shall not terminate the Contractor's responsibility or ownership of such materials or equipment until incorporated in place and accepted by the Officer-in-Charge. The Contractor shall be responsible for the safekeeping of such specialized materials or equipment until incorporated into the work and accepted by the Officer-in-Charge. The amount included for payment under this subsection shall be subject to the retention requirement. The Contractor shall reimburse the BWS the "advanced payment" for materials and equipment not properly stored and which cannot be certified for use on the project.
- C. Equipment. Equipment as specified in Section 6.4(A) of these General Conditions is defined as any item such as a water heater that can be removed with a hand tool, or like an air conditioner, is capable of being moved or transferred to another location, and is accessible to tagging with an identification number such as a generator.

#### **6.5 Final Payment**

- A. Final Payment. After final acceptance by the Officer-in-Charge, the Contractor will be paid the balance due in accordance with the Officer-in-Charge's final estimate of the construction actually performed and approved by the Contractor, provided that final payment will be made only with the approval of the Contracting Officer and upon submittal of the following to the Contracting Officer:
  - 1. Whenever the payment includes payment of movable or removable equipment, two (2) copies of the list of equipment installed or provided under the contract, listing the description, make, model, serial number, quantity, cost, an indication of

whether or not the equipment is movable or removable, and the specific location of the equipment such as the room number in which it is located;

2. Written consent of the surety or sureties on the Contractor's bonds;
3. Tax clearances from the director of taxation of the State and the Internal Revenue Service as shown on the Hawaii Compliance Certificate;
4. Certification from the Contractor affirming that the contractor has, as applicable, remained in compliance with all laws as required under this contract;
5. Completed form DF-P-65 (Exhibit "K"), acknowledging any outstanding claims arising out of the performance of the Contractor's work; and
6. Evidence of continuing insurance as required in Section 7.1 of these General Conditions.

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

1. Upon notice from the State Department of Taxation or Internal Revenue Service, assign payment to the appropriate tax agency;
2. Unilaterally use the final payment estimate of the Officer-in-Charge as the final payment to the Contractor; and
3. Determine the Contractor to be nonresponsible, which may jeopardize the Contractor's future status as a qualified bidder.

#### **6.6 Prompt Payment by Contractor to Subcontractors**

Pursuant to Section 103-10.5, HRS, the following shall apply to this contract:

- A. Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.
- B. Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.
- C. Where a subcontractor has provided the following documentation, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the contractor and subsequently, upon receipt from the procurement officer, by the contractor to the subcontractor within the applicable time periods specified in Sections 103-10.5(b) and 103-10, HRS. The subcontractor must provide:
  1. Evidence to the contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request; and

2. An acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State or the following has occurred:
    - i. A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to contractor and the surety, as provide for in Section 103D-24, HRS; and
    - ii. The subcontractor has provided to the contractor (a) an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the contractor; (b) any other bond acceptable to the contractor; or (c) any other form of mutually acceptable collateral.
- D. If the contractor fails to pay in accordance with this section, a penalty of one and one-half percent per month shall be imposed on the outstanding amounts due to the subcontractor. Where a contractor has violated subsection (b) three or more times within two years of the first violation, the contractor shall be referred to the contractor license board by the procurement agency under Section 444-17(14), HRS.

#### **6.7 Assignment of Money**

No money receivable under the contract is transferable, or otherwise assignable, without the written consent of the Contracting Officer. The rights of the assignee to monies due or to become due to the Contractor shall be subject to Section 8.5 of these General Conditions.

### **ARTICLE 7 - INSURANCE; PERFORMANCE AND PAYMENT BONDS**

For purposes of this Article only, "BWS" and "Board of Water Supply" shall mean the Board of Water Supply, City and County of Honolulu, the City and County of Honolulu, and their respective elected and appointed officials, employees, agents, consultants, and construction managers .

#### **7.1 Insurance**

- A. Required Coverage. The Contractor shall procure or cause to be procured and maintain (as provided herein), at no cost to the BWS, during the life of this contract and any extensions thereof, or until such time as action against the Contractor or subcontractor for death, injuries, losses and damages is barred by the provisions of Chapter 657, HRS, whichever is longer, the following types of insurance to cover the operations under the contract, and all other insurance that may be required under the laws, ordinances or regulations of any governmental authority:
1. Workers Compensation and Employers Liability Insurance. The Contractor shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability and/or commercial excess limits shall be not less than \$1,000,000 each accident or otherwise as set forth in the Special Provisions.
  2. Commercial General and Excess / Umbrella Liability Insurance
    - a. Contractor shall maintain commercial general liability (CGL occurrence form) and if necessary commercial excess / umbrella insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and not less than \$2,000,000 products-completed operations aggregate limit, or otherwise as set forth in the Special Provisions. If such CGL insurance contains a general aggregate limit, it shall apply

separately to this location or project. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse and underground property damage (XCU) and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The BWS shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and under the commercial excess / umbrella, if any. The City's and the Board of Water Supply's Design Engineers, Architects and/or Surveyors, and Construction Manager shall be included as additional insureds, using ISO additional insured endorsement (or equivalent), and under the commercial excess / umbrella, if any.

- b. Continuing Completed Operations Liability Insurance. Contractor shall maintain commercial general liability (CGL) and if necessary, commercial excess / umbrella liability insurance with limits of not less than \$1,000,000 each occurrence or otherwise as set forth in the Special Provisions for at least five (5) years following final acceptance of the work, or for such other period as specified in the special provisions. Continuing CGL insurance shall be written on ISO occurrence form (or equivalent form) and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract. Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit. Continuing commercial excess / umbrella coverage, if any, shall include liability coverage for damages to the insured's completed work equivalent to that provided under ISO form.
3. Business Automobile and Excess / Umbrella Liability Insurance. Contractor shall maintain business automobile liability, or equivalent (including no-fault coverage) and if necessary, commercial excess / umbrella liability insurance with limits of not less than \$1,000,000 per accident, or otherwise as set forth in the Special Provisions. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles) used in the performance of this contract. Business automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20,, with appropriate Hawaii endorsements, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions.
4. Professional Liability Insurance. If Contractor is required to perform professional design and/or engineering services, Contractor shall provide professional liability insurance covering the Contractor, any design professionals hired by Contractor, any subcontractors, and their respective employees and agents for liability arising out of errors, omissions, or negligence in the performance of professional services under the contract. Limits shall be not less than \$1,000,000 per claim, or otherwise as set forth in the Special Provisions. Such insurance shall remain in full force and effect continuously for the period of design and construction of the work, and for an additional five (5) year period following substantial completion of construction, as set forth in the Special Provisions, provided that such coverage is reasonably available at commercially affordable premiums, as mutually determined and agreed, prior to the bid.

5. Property Insurance
    - a. The Contractor shall purchase and maintain in force property or such applicable insurance on the work at the site, in an amount equal to the full replacement cost of the work, or the initial contract sum (including any subsequent modifications thereto), whichever is greater. Such property insurance shall be maintained in effect as required in the Contract documents. This insurance shall name as insureds the City, the BWS, the Contractor, and all subcontractors on the project.
    - b. Builders Risk Insurance. The Contractor shall purchase and maintain builders risk insurance covering loss or damage to covered property, which shall include site work (defined as new underground works, sidewalks, paving, excavation or site preparation and landscaping), structures or buildings, and all fixtures, materials, supplies, machinery and equipment to be used in or incidental to the work, scaffolding, falsework, fences and temporary buildings located on the site, portions of the work located away from the site but intended to be used in the site, and portions of the work in transit. This insurance shall cover all risks of physical loss or damage, excluding Earthquake, Flood, and Hurricane, and shall include coverage for reasonable compensation for architects' services and other expenses made necessary due to an insured loss, the cost of debris removal and demolition as may be legally necessary by operation of any law, ordinance, or regulation.
  6. Earthquake, Flood, and Windstorm Insurance. If required in the special provisions, Contractor shall provide coverage against loss or damage to the work due to the perils of earthquake, flood, and/or hurricane, with limits equal to the replacement cost of the work or as close to such amount as is reasonably available, subject to the review and approval of the BWS.
  7. Boiler and Machinery Insurance. The Contractor shall purchase and maintain Boiler and Machinery insurance if required by the Contract or by law, covering insured objects during installation and testing and until final acceptance. This insurance shall name the BWS as an insured.
  8. Contractor/Subcontractor shall be solely responsible for any and all loss or damage to Contractor's/Subcontractor's equipment, tools and other personal property and may at their own option purchase insurance to cover such property and equipment.
- B. Partial occupancy or use of the work shall not commence until the insurance company or companies providing insurance as required have consented to such partial occupancy or use. Contractor shall take reasonable steps to obtain consent of the insurer(s), and Contractor and the BWS agree to take no action, other than upon mutual written consent, with respect to occupancy for use of the work that could lead to cancellation, lapse, or reduction of insurance.
- C. General Conditions. The following general conditions are applicable to all insurance herein required, unless otherwise specified above:
1. Except for Professional Liability insurance required in Section 7.1(A)(4) of these General Conditions, Contractor waives all rights against the BWS and the City for recovery of damages to the extent such damages are covered by the insurance required herein.



2. All insurance required herein shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the BWS.
- D. Subcontractors Insurance. Contractor shall either:
1. Include all subcontractors as insureds under all insurance set forth in Section 7.1(A) of these General Conditions; or
  2. Cause each subcontractor employed by Contractor to purchase and maintain insurance of the types specified above. Contractor shall obtain and maintain evidence of each subcontractor's insurance, and if requested by the BWS, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.
- E. Cross-Liability Coverage. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
- F. The Contractor is responsible for paying any portion of any loss not covered because of the operation of any deductible applicable to the insurance required herein. If the BWS or the City is damaged by the failure of the Contractor to maintain insurance as required in this paragraph, then the Contractor shall bear all reasonable costs properly attributable to that failure.
- G. Evidence of Insurance
1. Upon execution of the contract by Contractor, Contractor shall furnish BWS with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with insurance requirements set forth in Sections 7.1(A)(1), 7.1(A)(2), and 7.1(A)(3) of these General Conditions.
  2. Prior to commencing the work, Contractor shall furnish the BWS with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance required under Sections 7.1(A)(4), 7.1(A)(5), 7.1(A)(6), and 7.1(A)(7) of these General Conditions.
  3. With respect to continuing insurance as required under Sections 7.1(A)(2)(b) and 7.1(A)(4) of these General Conditions, Contractor shall provide certificate(s) of insurance evidencing such coverage at the time of final payment, and thereafter whenever requested by the BWS.
  4. All certificates shall provide for sixty (60) days written notice to the BWS prior to the cancellation or material change of any insurance referred to therein.
  5. Contractor shall provide certified copies of all insurance policies required above within ten (10) days of the BWS's written request for said copies.
  6. Failure of the BWS to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the BWS to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligations to maintain such insurance.
  7. Prior to starting the Work, the Contractor shall furnish the BWS with certificates of insurance, acceptable to the BWS evidencing that the Contractor and all subcontractors have the required insurance coverages. Each of the insurance policies (or the certificates of insurance evidencing such insurance policies in the

event that the Contractor provides proof of insurance by means of such certificates of insurance in lieu of true and correct copies of each required insurance policy) shall provide that such policy may neither be canceled nor the coverage thereunder reduced (whether or not requested by the Contractor) except upon sixty (60) days prior written notice to the BWS of such cancellation or reduction, sent to the BWS by certified or registered mail, postage prepaid. The words "endeavor to" and "failure to mail such notice shall impose no obligation for liability..." are unacceptable. These two (2) phrases must be crossed out.

H. Endorsements; Other Requirements

Commercial General and Excess / Umbrella Liability Insurance and Business Automobile and Excess / Umbrella Liability Insurance shall:

1. Name the " Board of Water Supply, City and County of Honolulu" and the "City and County of Honolulu" as additional insureds. "Board of Water Supply" shall mean the Board of Water Supply, City and County of Honolulu, its elected and appointed officials, employees, agents, consultants, and construction managers. "City and County of Honolulu" shall mean the City and County of Honolulu, its elected and appointed officials, employees, agents, consultants, and construction managers;
2. Show the certificate holder as the Board of Water Supply, 630 South Beretania Street, Honolulu, Hawaii, 96843; and
3. Include the Contract and project numbers, and name of the project.

I. Failure to Maintain Required Insurance

1. Failure to maintain the required insurance may result in termination of this Contract at the BWS's option.
2. The BWS shall have the right, but not the obligation, to prohibit Contractor or any of its subcontractors from entering the project site until Contractor has provided certificates or other evidence that insurance has been placed in complete compliance with these requirements and such certificates have been approved by the BWS.
3. If Contractor fails to maintain the insurance as set forth herein, the BWS shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

J. No Representation of Coverage Adequacy. By requiring insurance herein, the BWS and the City does not represent that the coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the BWS and the City under this Contract.

K. The BWS reserves the right to require additional kinds or amounts of insurance, as may be mutually agreed upon from time to time.

**7.2 Indemnification**

A. The Contractor shall be responsible for all damages to persons or property, including work of other contractors, arising from or relating to its operations, the prosecution of the

assigned work, or the use of the subject premises by Contractor, its employees, agents, representatives, or subcontractors; provided, however, that the Contractor shall not be responsible for such portion of damages, if any, proximately caused by the negligence or intentional misconduct of the BWS or the City. Contractor shall indemnify and hold harmless the BWS, the City, and all of their elected and appointed officials, officers, consultants, representatives, volunteers, agents, and employees against any liability, claims, demands, or causes of action of any nature whatsoever for damages of any kind as above set forth, and agrees at Contractor's expense to defend any legal or other action brought against the BWS, the City, and their elected and appointed officials, officers, consultants, representatives, volunteers, agents, and employees founded upon any such liability, claim, demand, or cause of action, and pay any attorneys' fees incurred by the BWS, the City, and their elected and appointed officials, officers, consultants, representatives, volunteers, agents, and employees in connection therewith.

- B. Workers' Compensation Law. The Contractor shall hold harmless the BWS, the City, and all of their elected and appointed officials, officers, consultants, representatives, volunteers, agents, and employees, and the construction manager, from all suits, actions, or claims of any character brought on account of any claims or amounts arising or recovered under the Workers' Compensation Law or any other law, by-law, ordinance, order, or decree.
- C. Intellectual Property. If Contractor, in connection with the Contract, is required or desires to use any design, device, material, process, or other intellectual property in which a third party claims rights, such as copyright or patent rights, the right for such use shall be procured by Contractor from the owner of such rights or the owner's authorized designee. Contractor shall indemnify and hold harmless the BWS, the City, and all of their elected and appointed officials, officers, consultants, representatives, volunteers, agents, and employees against any liability, claims, demands, or causes of action of any nature whatsoever related to or involving the design, device, material, process, or other intellectual property, and agrees at Contractor's expense to defend any legal or other action brought against the BWS, the City, and their elected and appointed officials, officers, consultants, representatives, volunteers, agents, and employees founded upon any such liability, claim, demand, or cause of action, and pay any attorneys' fees incurred by the BWS, the City, and their elected and appointed officials, officers, consultants, representatives, volunteers, agents, and employees in connection therewith.
- D. The provisions of this Section 7.2 shall remain in full force and effect notwithstanding the expiration or early termination of the Contract.

### **7.3 Payment Guarantee**

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

### **7.4 Contract Performance and Payment Bonds**

- A. Acceptable Contract Performance and Payment Bonds. The Contractor shall provide, at

no cost to the BWS, contract performance, and payment bonds. Subject to Section 7.4(E) below, acceptable contract performance and payment bonds shall be limited to:

1. Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii;
  2. Legal tender; or
  3. A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's, or official check drawn by, or a certified check accepted by, a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Association, and payable at sight or unconditionally assigned to "Board of Water Supply, City and County of Honolulu".
    - a. These instruments may be utilized only to a maximum of \$100,000.
    - b. If the required security amount exceeds \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.
- B. When Required. Performance and payment bonds shall be required when the price of the contract is \$25,000 or more and each shall be in an amount equal to one hundred percent (100%) of the amount of the contract price. The Contractor shall deliver the performance and payment bonds to the BWS, along with the executed contract. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's award shall be canceled; its bid security enforced, and the Contracting Officer may award the contract to the next lowest bidder.
- C. Bond Forms
1. The Contractor shall execute the surety performance and payment bond forms provided with the Contract.
  2. If the Contractor intends to submit other than surety bonds, the Contractor may request of the Contracting Officer the bond form to be submitted with security other than surety bond, or the Contractor may submit the performance and payment security along with its own bond form.
- D. Payment Claims Against the Bond
1. Each person who has furnished labor or material to the Contractor for the work required under the Contract for which a payment bond or a performance and payment bond is furnished under this section, and who has not been paid amounts due before the expiration of a period of ninety (90) days after the day on which the last of the labor was performed or material was furnished or supplied, for which a claim is made, may institute an action for the amount, or balance thereof, unpaid at the time of the institution of the action against the Contractor or Contractor and its sureties, on the payment bond and have his rights and claims adjudicated in the action, and judgment rendered thereon; subject to the BWS priority on the bond.

As a condition precedent to any such suit, written notice shall be given by registered or certified mail to Contractor and surety, **within ninety (90) days** from the date on which the person did or performed the last labor or furnished or supplied the last of the material for which claim is made, stating with substantial

accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed.

2. Every suit instituted upon a payment bond shall be brought in the circuit court of the circuit in which the project is located, but no suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied for the work provided in the contract. The obligee named in the bond need not be joined as a party in any suit.
3. If the full amount of the liability of the Contractor or the Contractor and its sureties on the security is insufficient to pay the full amount of the claims, then, after paying the full amount due the BWS, the remainder shall be distributed pro rata among the claimants.
4. Certified copies of bonds may be requested and obtained by any person upon payment of the costs of reproduction and certification of the bonds, and postage. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

E. Contracts with Federal Funds. In addition to the requirements of this section, whenever a contract is partially or fully funded with Federal funds, the surety companies shall be those listed in the latest issue of the U. S. Treasury Circular 570.

## **ARTICLE 8 - DISPUTES AND REMEDIES**

### **8.1 Suspension of Work**

- A. The Officer-in-Charge may, by written order, suspend the work, either in whole or in part for periods as the Officer-in-Charge may deem necessary for any cause, including but not limited to:
1. Weather or soil conditions considered unsuitable for prosecution of the work;
  2. Failure on the part of the Contractor to:
    - a. Correct conditions unsafe for the general public or for the workers;
    - b. Carry out orders given by the Officer-in-Charge;
    - c. Perform the work in strict compliance with the provisions of the Contract;
    - d. Provide adequate supervision on the jobsite; or
    - e. Maintain current liability insurance coverages.
  3. Whenever a redesign that may affect the work is deemed necessary by the Officer-in-Charge;
  4. Unacceptable noise or dust arising from the construction even if it does not violate any law or regulation; or
  5. The convenience of the BWS.
- B. Partial and Total Suspension. Suspension of work on some but not all items of work shall be considered a "partial suspension." Suspension of work on all items shall be considered "total suspension." The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to

resume.

- C. Reimbursement to Contractor. In the event that the Contractor is ordered by the Officer-in-Charge in writing as provided herein to suspend all or part of the work under the contract in accordance with Sections 8.1(A)(3), 8.1(A)(4), or 8.1(A)(5) of these General Conditions, the Contractor may be reimbursed for actual money expended towards the project during the period of suspension. No allowance will be made for anticipated profits.
- D. Cost Adjustment. If the performance of all or part of the work is suspended for reasons beyond the control of the Contractor, an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such suspension, and the contract modified in writing accordingly. However, no adjustment under this section shall be made for any suspension:
1. To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
  2. For which an adjustment is provided for or excluded under any other provision of the contract.
- E. Claims for Adjustment. Any adjustment in contract price made pursuant to this section shall be determined in accordance with the provisions on changes and claims for adjustment. Claims for compensation shall be filed in writing with the Contracting Officer **within thirty (30) days** after the date of the order to resume work or the claims will not be considered. Together with the claim, the Contractor shall submit substantiating documents covering the entire amount shown on the claim. The Contracting Officer shall take the claim under consideration and may make such investigations as are deemed necessary and shall be the sole judge as to the equitability of the claim. The Contracting Officer's decision shall be final.
- F. No Adjustment. No provision of this section shall entitle the Contractor to any adjustments for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under the Contract, or for suspensions, either partial or whole, made by the Officer-in-Charge under the provisions in Section 8.1(A)(2) of these General Conditions.
- G. Contractor's Responsibilities. In case of suspension in the performance of the work under the contract from any cause whatsoever, the Contractor, in addition to being responsible for performing the work under the Contract, shall:
1. Indemnify and hold harmless the BWS and its officers and employees from liability for any injury or damage occurring during the period that the performance of the contract is suspended;
  2. Be responsible for all materials and equipment delivered to the site of the project, including materials and equipment for which Contractor has received partial payment;
  3. Properly store the materials and equipment which have been partially paid for by the BWS or which have been furnished by the BWS;
  4. Immediately remove all surplus materials, equipment, and rubbish, as directed by the Officer-in-Charge;

5. If the project site is within public or private highways, roads, or streets, neatly and compactly store all materials and equipment so as not to impede traffic or interfere with the use of public utilities or facilities;
6. Provide suitable drainage and erect such temporary structures as are necessary to protect the project or parts of the project from damage;
7. Properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedlings, and sodding furnished under this contract; and
8. Continue to maintain liability insurance coverages.

## **8.2 Termination for Default for Nonperformance or Delay; Damages for Delay**

- A. Default. If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in the contract, or any agreed upon extension thereof, fails to complete said work within such time, or commits any other substantial breach of the Contract, and further fails **within seven (7) days**, or such longer time as the Officer-in-Charge may allow, after receipt of written notice from the Officer-in-Charge to commence and continue correction of the refusal or failure with diligence and promptness, the Contracting Officer may, upon recommendation by the Officer-in-Charge, by written notice to the Contractor, declare the Contractor in breach and terminate the Contractor's right to proceed with the work or the part of the work as to which there has been delay or other breach of contract. In this event the BWS may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefor. Regardless of whether the Contractor's right to proceed with the work is terminated, the Contractor and the Contractor's sureties shall be liable for any damage to the BWS resulting from the Contractor's refusal or failure to complete the work within the time specified.

Causes that may be deemed by the BWS to be a default and result in Contractor's termination under the Contract include, but are not limited to, the following:

- (1) Failure to commence work within the time specified in the notice to proceed;
- (2) Failure to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work;
- (3) Failure to comply with orders of the Officer-in-Charge;
- (4) Discontinuation of the prosecution of the work;
- (5) Failure to resume work that has been discontinued within a reasonable time after notice to resume;
- (6) Insolvency or being declared bankrupt, or committing any act of insolvency or bankruptcy;
- (7) Allowing any final judgment to stand against the Contractor unsatisfied for a period of ten (10) days;
- (8) Assignment for the benefit of creditors;

- (9) Unauthorized changes in the subcontractor listing submitted with the Contractor's bid; or
- (10) Failure to correct deficiencies or to complete the Contract.
- B. Contractor's Duties. Notwithstanding termination of the Contract and subject to any directions from the BWS, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the BWS has an interest.
- C. Compensation. Payment for completed goods and services delivered and accepted by the BWS 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 BWS.
- D. Time Extension. The Contractor's right to proceed shall not be so terminated nor shall the Contractor be charged with resulting damage if the delay in the completion of the work was not the fault of the Contractor as in Section 5.3 of these General Conditions.
- E. Liquidated Damages
1. Upon Termination. If fixed and agreed liquidated damages are provided in the Contract, and if the BWS so terminates the Contractor's right to proceed, the resulting damage will consist of the liquidated damages for the time as may be required for final completion of the work.
  2. In Absence of Termination. If fixed and liquidated damages are provided in the Contract, and if the BWS does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.
- F. Additional Rights and Remedies. The rights and remedies of the BWS provided in this section are in addition to any other rights and remedies provided by law or under this Contract.

### **8.3 Termination for Convenience**

- A. Termination. The Contracting Officer may, when the interests of the BWS so require, terminate the contract in whole or in part, for the convenience of the BWS. The Contracting Officer, upon recommendation by the Officer-in-Charge, shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.
- B. Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the BWS's approval. The Officer-in-Charge may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the BWS. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.
- C. Right to Construction and Goods. The Officer-in-Charge may require the Contractor to transfer title and deliver to the BWS in the manner and to the extent directed by the



Officer-in-Charge:

1. Any completed construction, goods, or work product; and
  2. The partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (the "Construction Material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of the Contract.
- D. The Contractor shall protect and preserve property in the possession of the Contractor in which the BWS has an interest. If the Officer-in-Charge does not exercise this right, the Contractor shall use its best efforts to sell the construction, goods, and construction materials in accordance with the standards of Section 490:2-706, HRS. Use of this paragraph in no way implies that the BWS has breached the Contract by exercise of the termination for convenience clause.
- E. Compensation
1. The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by the Hawaii Procurement Code and its administrative rules, bearing on such claim. If the Contractor fails to file a termination claim **within one (1) year from** the effective date of termination, the Contracting Officer may, upon recommendation of the Officer-in-Charge, pay the Contractor, if at all, an amount set in accordance with Section 8.3(E)(3)(b) of these General Conditions.
  2. The Officer-in-Charge and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the BWS, the proceeds of any sales of construction, goods, and construction materials under Section 8.3(D) of these General Conditions, and the contract price of the work not terminated.
  3. Absent complete agreement under Section 8.3(E)(2) of these General Conditions, the Contracting Officer shall pay the Contractor the following amounts, provided payments under Section 8.3(E)(2) shall not duplicate payments under this subsection for the following:
    - a. The actual cost of all contract work performed prior to the effective date of the notice of termination plus a five percent (5%) markup on actual direct costs on the portion of the work (the markup shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of the work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
    - b. Subject to the prior approval of the Contracting Officer, the cost of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Section 8.3(B) of these General Conditions. Subcontractors shall be entitled to a markup of no more than ten percent (10%) on direct costs incurred to the date of termination. These costs

must not include costs paid in accordance with Section 8.3(E)(3)(a) of these General Conditions;

- c. 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 the Contract.
  - d. The total sum to be paid to the Contractor under this subsection 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 construction, goods, and construction materials under Section 8.3(D), and the Contract price of work not terminated.
4. Costs claimed, agreed to, or established under Sections 8.3(E)(2) and 8.3(E)(3) of these General Conditions shall be in accordance with the Hawaii Procurement Code and its administrative rules.

#### **8.4 Liquidated Damages**

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

#### **8.5 Authority to Withhold Money Due or Payable**

- A. Withholding Money Due or Payable. The BWS may withhold such amounts from the money due or that becomes due under the Contract to the Contractor or to any assignee under Section 6.7 of these General Conditions, as may be necessary to:
  1. Protect the BWS from any liability resulting from the work performed under this Contract;
  2. Satisfy any obligation of the Contractor to the BWS, the City, the State Department of Taxation, or the Internal Revenue Service, including obligations not relating to the Contract as required by law, and the obligation of the Contractor to the workers, subcontractors, and suppliers who have performed labor or furnished material and equipment under the contract as the Contracting Officer deems necessary, but only with the concurrence of or instructions from the Contractor's surety; or
  3. Repair, restore, or compensate for any real or personal property located within the project site or in the vicinity thereof that was damaged as a result of the fault

or negligence of the Contractor while performing the work under this Contract.

- B. Making Payment from Money Withheld. The BWS may use the amounts withheld pursuant to Section 8.5(A) of these General Conditions to make payments to protect the BWS from liability under Section 8.5(A)(1) of these General Conditions, to satisfy any obligation of the Contractor under Section 8.5(A)(2) of these General Conditions, and to repair, restore, or compensate for property under Section 8.5(A)(3) of these General Conditions; provided, however, that before making any payment for damages to property prescribed in Section 8.5(A)(3) of these General Conditions, the Officer-in-Charge shall request in writing that the Contractor undertake the repair or restoration of the damaged property or make compensation therefor. If the Contractor fails or refuses to make such repair, restoration, or compensation to the satisfaction of the Officer-in-Charge **within seven (7) days** after notification by the Officer-in-Charge, the Contracting Officer, upon recommendation of the Officer-in-Charge and upon the Contracting Officer's own findings that such recommendation is justified, may make the necessary payments.

## 8.6 Authority to Resolve Contract and Breach of Contract Controversies

- A. Decisions of the Officer-in-Charge. Any question or dispute concerning any provision of the Contract that may arise during its performance shall initially be decided by the Officer-in-Charge; provided, that decisions on questions or disputes relating to default or termination of the contract, extra cost to the BWS where the cost is more than ten percent (10%) of the original contract price or \$25,000 or more, and payment, shall be made only with the approval of the Contracting Officer.
- B. Controversies between the BWS and Contractor. All controversies between the Officer-in-Charge and the Contractor which arise under, or are by virtue of, the Contract and which are not resolved by mutual agreement between the Officer-in-Charge and the Contractor, shall be decided by the Contracting Officer in writing, within the time limitations below, after receipt of a written request from the Contractor for a final decision:
1. For controversies or claims not exceeding fifty thousand dollars (\$50,000): **ninety (90) calendar days** after receipt of the written request.
  2. For claims exceeding fifty thousand dollars (\$50,000): **ninety (90) calendar days** after receipt of the claim; provided that if a decision is not issued within ninety calendar days, the Contracting Officer shall notify the Contractor of the time within which the Contracting Officer will make the decision. The reasonableness of this time period will depend on the size and complexity of the claim and the adequacy of the Contractor's supporting data and other relevant factors.
- C. If a decision on a controversy or a claim not exceeding fifty thousand dollars (\$50,000) is not made within ninety (90) calendar days after receipt, or if a decision is not made within the time promised for a claim in excess of fifty thousand dollars (\$50,000), the Contractor may proceed as if an adverse decision has been received.
- D. Controversies Involving BWS Claims Against the Contractor. All controversies involving claims asserted by the BWS against a Contractor, which cannot be resolved by mutual agreement, shall be the subject of a decision by the Contracting Officer or the Officer-in-Charge as applicable.
- E. Decision. The Contracting Officer shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. Any such decision shall be final and conclusive, unless fraudulent, or unless the Contractor brings an action seeking judicial review of the

decision in a Circuit Court of this State **within the six (6) months** from the date of receipt of the decision.

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

- F. The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting Contractor action concerning appeal. Such payments shall be without prejudice to the rights of either party and where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment.
- G. Interest. Interest on amounts ultimately determined to be due to a Contractor or the BWS shall be payable at the statutory rate applicable to judgments against the State of Hawaii under chapter 662, Hawaii Revised Statutes (HRS), from the date the BWS receives notice of the written claim through the date of the decision or judgment, whichever is later; except that if an action is initiated in Circuit Court pursuant to Section 103D-711, HRS, interest under this section shall only be calculated until the time such action is initiated.
- H. Cost of Dispute. The Contractor shall pay to the BWS the amount of the BWS's costs to enforce the contract, including but not limited to amounts for attorneys' fees, consultants' fees, and expenses.

## **ARTICLE 9 - SEXUAL HARASSMENT**

### **9.1 General**

The Contractor must comply with the requirements of Section 1-18 of the Revised Ordinances of Honolulu (ROH) regarding sexual harassment. The Contractor shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance.

### **9.2 Applicability**

- A. ROH § 1-18 is applicable to the Contractor's business and includes:
  - 1. Prohibitions against an officer's or employee's sexual harassment of the following:
    - a. Another officer or employee of the employer;
    - b. An individual under consideration for employment with the employer; or
    - c. An individual doing business with the employer.
  - 2. A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under paragraph (1) above;
  - 3. A prohibition against retaliation towards an officer, employee, or individual who

has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;

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

### **9.3 Policy Term**

The policy required under this section shall be in effect for at least the duration of the Contractor’s Contract with the BWS.

### **9.4 Pledge and Acceptance**

The action of the Contractor signing the Contract shall constitute the Contractor’s acceptance of and pledge to comply with the provisions for the sexual harassment policy as required by ROH § 1-18.

## **ARTICLE 10 - MISCELLANEOUS**

### **10.1 Ownership Rights and Copyright**

Contractor acknowledges and agrees that all Work Product is the property of the BWS, and all ownership, right, title, and interest therein have vested and shall vest solely with the BWS and is and shall be deemed to be a “WORK MADE FOR HIRE” under United States Copyright Laws (17 U.S.C. Section 101 et seq.) and other applicable laws. To the extent that title to any such Work Product may not, by operation of law, vest in the BWS, or such works may not be considered to be work made for hire, Contractor hereby irrevocably assigns to the BWS all ownership, right, title, and interest that Contractor may have in such Work Product, without additional compensation and free of all liens and encumbrances of any type. Contractor represents and warrants to the BWS that the BWS is and shall be the exclusive owner of the Work Product and all proprietary rights relating thereto, and Contractor shall defend, indemnify, and hold harmless the BWS and its employees, officers, agents, and assignees from and against any infringement or

claim of infringement relating thereto. Contractor will promptly disclose to the BWS all Work Product when made or developed. Contractor agrees to give the BWS or any person designated by the BWS any reasonable assistance required to perfect and enforce the BWS's rights in such Work Product, and Contractor agrees to execute and assist in the preparation of any document that the BWS may consider necessary or helpful in obtaining or maintaining any patents, copyrights, registrations, or other proprietary rights in the Work Product. Contractor shall deliver all Work Product to the BWS upon expiration or termination of the Contract.

#### **10.2 Assignment of Antitrust Claims**

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

#### **10.3 Campaign Contributions by State and County Contractors**

Contractors are hereby notified of the applicability of Section 11-355, HRS, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract.

#### **10.4 Governing Law and Jurisdiction**

The laws of the State of Hawaii shall govern the validity of the Contract and any of the Contract's individual terms or provisions, as well as the rights and duties of the parties to the Contract. Any action at law or in equity to enforce or interpret the provisions of the Contract shall be brought in a court of competent jurisdiction in Honolulu, Hawaii. The Contractor consents to the exercise of personal jurisdiction over Contractor by the courts of the State of Hawaii.

#### **10.5 Severability**

If any term or provision of the contract is found to be illegal, unenforceable, or in violation of law, then, notwithstanding such term or provision, all other terms or provisions of the contract shall remain in full force and effect. When possible, however, the contract shall be interpreted so as to reflect the intentions of the parties as indicated by the provision or term in question.

#### **10.6 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. Contractor shall be an equal opportunity employer.

#### **10.7 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 the Contract.

#### **10.8 Confidentiality of Material**

- A. All material given to or made available to the Contractor by virtue of the 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 BWS.
- B. All information, data, or other material provided by the Contractor to the BWS shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F, HRS.
- C. The provisions of this Section 10.8 shall remain in full force and effect notwithstanding the expiration or early termination of the Contract.

## **10.9 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, BWS, 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 BWS by virtue of this Contract that is identified as personal information shall be safeguarded by the Contractor and shall not be disclosed without the prior written approval of the BWS.
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 BWS to reduce the risk of unauthorized access to personal information.
4. Contractor shall report to the BWS 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 BWS, or personal information created or received by Contractor on behalf of the BWS.

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 BWS learns of a material breach by Contractor of this paragraph by Contractor, the BWS 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 BWS 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, Contractor shall pursuant to chapter 487R, HRS, destroy all copies (paper or electronic c form) of personal information received from the BWS.
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 BWS, and any cost or pricing data, for three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the BWS. After the three (3) year retention period has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS.

## 10.10 **Publicity**

The Contractor shall not refer to the BWS, the City, or any office, agency, or officer thereof, or any BWS or City employee, or the services or goods, or both, provided under this Contract, in any of the Contractor's brochures, advertisements, or other publicity. All media inquiries and



communications to the Contractor about the subject matter of this Contract shall be referred to the BWS.

**10.11 Records Retention**

The Contractor and any subcontractors shall maintain the books and records that relate to the services performed or provided pursuant to the Contract for four (4) years from the date of final payment under the Contract.

**10.12 Entire Agreement**

The Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the BWS and the Contractor. The 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 BWS and the Contractor other than as set forth or as referred to herein.

**10.13 Waiver**

The failure of the BWS to insist upon the strict compliance with any term, provision, or condition of the Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the BWS's right to enforce the same in accordance with the Contract.