

**TERMS AND CONDITIONS
FOR PURCHASE ORDERS ISSUED BY
THE HONOLULU BOARD OF WATER SUPPLY,
CITY & COUNTY OF HONOLULU**

1. DEFINITIONS.

- A. "BWS" means the Honolulu Board of Water Supply, City and County of Honolulu.
- B. "Contract" means the Purchase Order, the Solicitation, these Terms and Conditions, and, to the extent applicable, any special provisions, requirements, specifications, plans, and any other documents regarding the Goods, Services, or Construction.
- C. "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 excludes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- D. "Contractor" means the Contractor selected by the BWS to provide the Goods, Services, or Construction.
- E. "Goods" means all property, including but not limited to equipment, equipment leases, materials, supplies, printing, insurance, and processes, including computer systems and software that are the subject of this Solicitation.
- F. "HAR" means the Hawaii Administrative Rules.
- G. "HRS" means the Hawaii Revised Statutes.
- H. "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 reissues, 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).
- I. "Manager" means the Manager and Chief Engineer of the BWS.

- J. "Potential Contractor" means each individual or entity that responds to the Solicitation.
 - K. "Pre-Existing Intellectual Property" shall mean any Intellectual Property that is not Work Product.
 - L. "Purchase Order" means that certain document wherein the BWS requests that Contractor provide Goods, Services, or Construction.
 - M. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance that are the subject of the Solicitation.
 - N. "Solicitation" means whatever documents the BWS uses to request information from or regarding individuals and entities capable or possibly capable of providing Goods, Services or Construction required by the BWS.
 - O. "Terms and Conditions" means these Terms and Conditions for Purchase Orders Issued by the Honolulu Board of Water Supply, City & County of Honolulu
 - P. "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.
2. **CONTRACT FORMATION.** Following the receipt of responses by one or more Potential Contractors to the Solicitation, the BWS shall select the Contractor. The Contract shall become binding upon the BWS and the Contractor once both of the following occur: (i) the BWS issues the Purchase Order to the Contractor; and (ii) the Contractor complies with Section 4 of these Terms and Conditions.
3. **STATUTORY AND ORDINANCE REQUIREMENTS.** The applicable provisions of the Hawaii Revised Statutes, the Revised Charter of Honolulu, and the Revised Ordinances of the City and County of Honolulu shall be deemed to be a part of the Contract as though fully set forth therein.
4. **PROOF OF COMPLIANCE WITH LAWS.**
- A. BWS reserves the right to require the Contractor to furnish the following documents to the BWS prior to the award of the Contract:
 - i. A tax clearance certificate from the Department of Taxation of the State of Hawaii and the Internal Revenue Service, issued no more than six (6) months before the date when the BWS receives the certificate from the Contractor;
 - ii. A certificate from the Department of Labor and Industrial Relations of the State of Hawaii for HRS Chapter 383 (unemployment insurance), HRS Chapter 386 (workers' compensation), HRS Chapter 392 (temporary disability insurance), and HRS Chapter 393 (prepaid health care), issued no more than six (6) months before the date when the BWS receives the certificate from the Contractor;
 - iii. A certificate of good standing from the Department of Commerce and Consumer Affairs of the State of Hawaii ("DCCA"), issued no more than six (6) months before the date when the BWS receives the certificate from the Contractor; provided, however, that a Hawaii business that is a sole proprietorship is not required to register with DCCA and therefore is not required to submit a certificate of good standing.

- B. The above certificates should be applied for and submitted to the BWS as soon as possible. If a valid certificate is not submitted on a timely basis for award of the Contract, the BWS, in its discretion, may rescind the award and select another Contractor.
5. **QUALITY OF GOODS AND SERVICES.** The Contractor shall provide Goods and perform Services and Construction in accordance with the terms and conditions of the Contract. All Goods shall be new and of the quality specified by the BWS in the Contract. All Services and Construction shall be rendered in a professional manner.
6. **TIME, PLACE, AND MANNER OF DELIVERY OR PERFORMANCE.** The Contractor shall deliver all Goods to such place as the BWS shall designate. The delivery of Goods and the performance of Services or Construction shall occur in such manner and within such timeframe as the BWS specifies. It is mutually understood and agreed by and between the Contractor and the BWS that time of delivery of Goods and performance of Services or Construction shall be of the essence. If the Contractor is unable to deliver the Goods or perform the Services or Construction in a timely manner, and if the Manager, or an authorized representative, in his sole and absolute discretion, determines that the delay has been caused by circumstances beyond the Contractor's control, then the Manager or authorized representative may extend the time for the Contractor to deliver the Goods or perform the Services or Construction; provided, however, that the Contractor must first submit a written request to the Manager or an authorized representative for such an extension, which request shall set forth in detail the causes of such delay. Any extension granted by the Manager or an authorized representative pursuant to this section shall not be deemed a waiver of the BWS' right to terminate the Contract for any additional delay not covered by the specific terms of such extension.
7. **LIQUIDATED DAMAGES.** The amount of damage to the BWS as a result of failure to complete performance of the specified services under the Contract within the time fixed or any extension thereof, exclusive of overhead expenses, being certain but difficult, if not impossible to ascertain, Vendor agrees to pay the sum stated in the contract as liquidated damages, and not by way of penalty, for every calendar day of delay until the services are completed or goods delivered and accepted or the Vendor is terminated. To the extent that the Vendor is granted an extension of time pursuant to Paragraph 6, liquidated damages shall not be due the BWS for the extension period. The Vendor remains liable for damages caused other than by delay.
8. **WAGES AND HOURS**
- A. Vendor shall observe and comply with all the provisions of Chapter 104, HRS, relating to wages and hours of employees on public works. The Vendor 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 Vendor 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. Two (2) certified copies of all payrolls shall be submitted weekly to the Officer-in-Charge. The Vendor shall be responsible for the submission of certified copies of the payrolls 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 schedule of wages issued by the State Director of Labor and Industrial Relations is incorporated in the Invitation for Bids by reference only. Copies of the minimum basic wage schedule are available in the Purchasing Section of the Honolulu Board of Water Supply, 630 S. Beretania Street, Room 201, where invitations for bids are distributed. 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 records for all laborers and mechanics working at the site of the work shall be maintained by the Vendor 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. The Vendor shall make payroll 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 Vendor who: (1) fails to make payroll records accessible within ten days; (2) fails to provide information requested for the proper enforcement of this chapter within ten (10) days; or (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 Vendor 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 Vendor, terminate the Vendor'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 Vendor and its sureties shall be liable to the BWS for any excess costs occasioned thereby.
- H. Post Wage Schedule. The Vendor is required to post the applicable wage schedule in a prominent and easily accessible place at the job site. The Vendor shall give to each laborer and mechanic employed under the contract a copy of the rates of wages required to be posted.

9. INTELLECTUAL PROPERTY.

- A. **Work Product.** The 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 works made for hire, the Contractor hereby irrevocably assigns to the BWS all ownership, right, title, and interest that the 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 the 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. The Contractor will promptly disclose to the BWS all Work Products when made or developed. The Contractor

agrees to give the BWS or any person designated by the BWS any reasonable assistance required to perfect and enforce the BWS' rights in such Work Product, and the 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 Products to the BWS upon expiration or termination of the Contract.

B. Pre-Existing Intellectual Property. If the Contractor is required or desires to use any Pre-Existing Intellectual Property in connection with performing the Services or providing the Goods, the Contractor on behalf of itself and for the BWS shall procure the right for such use from the owner or owners of the Pre-Existing Intellectual Property. Further, the Contractor shall be solely responsible for paying any royalty, license, or other fee that is due or that may become due for use of the Pre-Existing Intellectual Property. Any such royalty, license, or other fee shall be considered to be originally included within the Contractor's response to the Solicitation and the price set forth in the Purchase Order.

10. WARRANTIES. The Contractor warrants that all Goods provided pursuant to the Contract shall: (i) be fit for the purposes for which they were intended by the BWS; (ii) be merchantable and free from defect and faulty workmanship, material, or design; and (iii) conform to all requirements and specifications set forth in the Contract. The Contractor shall remove and replace at no cost to the BWS, including no additional charges for taxes, labor, or shipping, any Goods that are found to be damaged or defective within the longest of the following time periods: (a) the standard warranty period of the manufacturer of the Goods; (b) one hundred eighty (180) calendar days following delivery of the damaged or defective Goods by the Contractor to the BWS; and (c) one hundred eighty (180) calendar days following acceptance of the damaged or defective Goods by the BWS. If the Contractor fails, neglects, or refuses to remove and replace the damaged or defective Goods, the BWS shall have the right to purchase in the open market a quantity of the Goods sufficient to replace those that are damaged or defective, and to deduct from any moneys due or that may thereafter become due to the Contractor the cost of purchasing such Goods in the open market.

11. CONTRACTOR LIABILITY. The Contractor's liability shall not cease when the BWS accepts the Goods, Services, or Construction that are the subject of the Contract. The Contractor's liability shall continue as provided by any terms of the Contract and by law.

12. INDEMNIFICATION. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and forever hold harmless the BWS and its officers, directors, employees, and agents from and against all costs, liability, loss, damage, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts, omissions, or breach of the Contract by the Contractor or the Contractor's employees, officers, agents, or subcontractors. The provisions of this section shall remain in full force and effect notwithstanding the expiration or early termination of the Contract.

13. FINAL INVOICE. After fully performing its obligations under the Contract, the Contractor shall issue an invoice (the "Final Invoice") in triplicate to the BWS. The Final Invoice must include the following information, to the extent applicable: (i) contract number; (ii) confirmation purchase order number; (iii) description of the Goods provided; (iv) item numbers, quantities, vendor codes, unit prices, and extended totals for the Goods provided; and (v) to the extent that the Goods include equipment, the make, model, serial number, and the specific delivery or installation location, including delivery address and building facility room number, for each piece of equipment, if such information is made available to the Contractor. If Contractor provided the BWS with a system comprised of multiple pieces of equipment, each discrete piece of equipment shall be listed separately on the Final Invoice.

14. PAYMENT.

A. Subject to the requirements of Section 12(D) below, payment will be authorized by the Manager or the authorized representative only after all of the following events occur: (i) Contractor fully

performs its obligations under the Contract; (ii) the Manager or authorized representative accepts all Goods provided and Services or Construction performed by the Contractor under the Contract; and (iii) the Contractor furnishes the BWS with the Final Invoice. Payment will be made as soon thereafter as the regular course of business will allow; provided, however, that payment shall be made no later than thirty (30) calendar days following the date when the last of the three (3) events identified above occurs.

- B. To the extent applicable, the amount of the payment will be computed in accordance with unit prices bid by Contractor.
- C. Unless otherwise specified, partial payment(s) for any Goods, Services, or Construction, or portion of any Goods, Services, or Construction under the Contract may be permitted. Said the Manager or an authorized representative may authorize partial payment(s), provided that delivery/performance and acceptance of the Goods, Services, or Construction is made before the delivery/performance date identified in the Contract and upon submittal of proper invoices and substantiating documents by Contractor. Said authorization by the Manager or authorized representative shall be by endorsement on the submitted invoice; no other action will be required to effect the partial payment(s).
- D. Pursuant to Section 3-122-112, HAR, final payment under any contract of \$25,000 or more shall be withheld until the Contractor furnishes the BWS with the following documents:
 - i. A tax clearance certificate from the Department of Taxation of the State of Hawaii and the Internal Revenue Service, issued no more than two (2) months before the date when the BWS receives the certificate from the Contractor;
 - ii. A certification from the Contractor, using a form available from the BWS, affirming that the Contractor has, as applicable, remained in compliance with HRS Chapter 383 (unemployment insurance), HRS Chapter 386 (workers' compensation), HRS Chapter 392 (temporary disability insurance), and Chapter 393 (prepaid health care), and has remained in good standing with DCCA.

15. **ASSIGNMENT OF MONEY DUE OR PAYABLE.** No assignment of money due or to become due to the Contractor shall be made without the prior written consent of the Manager or authorized representative.

16. **CONTRACTOR'S BREACH OF CONTRACT; RIGHTS AND REMEDIES OF THE BWS.**

- A. In the event of any breach of the Contract by the Contractor, the BWS shall have the right to terminate the Contract without service of notice or resort to the legal process and without any legal liability on its part.
- B. If the Contractor fails, neglects, or refuses to provide Goods or perform Services or Construction in accordance with the deadlines established by the Contract, and such failure or neglect is not the result of fire, strike, freight embargo, or Act of God or of the government, the BWS shall have the right to purchase in the open market a quantity of the Goods sufficient to replace those that were not timely provided or such Services or Construction as were not timely provided, and to deduct from any moneys due or that may thereafter become due to the Contractor the cost of purchasing such Goods, Services, or Construction in the open market.
- C. If the Contract is terminated, either in whole or in part, by reason of the breach thereof by the Contractor, including non-delivery or non-performance within the time specified, any loss or damage sustained by the BWS in procuring any Goods, Services, or Construction shall be borne and paid for by the Contractor.

- D. The rights and remedies of the BWS provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- E. If the Contractor breaches the Contract, the BWS may bar the Contractor from consideration for award of contracts for a period not to exceed three (3) years.

17. **ASSIGNMENTS AND SUBCONTRACTS.** The Contractor shall not assign or subcontract any of its obligations under the Contract without obtaining the BWS' prior written permission. An unauthorized assignment or subcontract shall not, under any circumstances, relieve the Contractor of its obligations under the Contract.

18. **INSURANCE.** A. Required Coverages. 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 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.** Contractor shall maintain workers compensation and employer's 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.
2. **Commercial General and Umbrella / Excess Liability Insurance.** Contractor shall maintain Commercial General Liability (CGL occurrence form) and if necessary commercial umbrella / excess insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate and products-completed operations aggregate limit, or as otherwise set forth in the Special Provisions. 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 an underground property damage 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 umbrella / excess, if any. The BWS's and City and County of Honolulu's design engineers, architects and/or Surveyors, or other agents shall be included as additional insured, using ISO additional insured endorsement (or equivalent), and under the commercial umbrella / excess, if any. The policy(ies) shall contain a waiver of subrogation in favor of the BWS.
3. **Business Automobile and Umbrella Liability Insurance.** Contractor shall maintain business auto liability or equivalent, (including no-fault coverage), or equivalent, and if necessary, commercial umbrella / excess liability insurance with a limit of not less than \$1,000,000 each accident or otherwise set forth in the Special Provisions. Such insurance shall cover liability arising out of any automobile (including owned, hired, and non-owned automobiles) used by Contractor in the performance of the Contract. Business automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, 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 current editions. The BWS shall be included as an additional insured under the business automobile liability using ISO additional insured endorsement (or equivalent).
4. **Professional Liability Insurance.** Contractor shall maintain professional liability insurance with limits of not less than \$1,000,000 per claim/annual aggregate, or otherwise as set forth in the Special Provisions covering Contractor and Contractor's employees and agents for liability arising out of errors, omissions, or negligence in the performance of professional services under the Contract. Such insurance shall remain in full force and effect continuously for the period of design and construction of the work.
5. Contractor shall be solely responsible for any and all loss or damage to Contractor's or any Subcontractor's equipment, tools, and other personal property, and Contractor may at its own option purchase insurance to cover such property and equipment.

- B. 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 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 all insureds for claims arising from Contractor's acts or omissions, and any other insurance or self-insurance programs afforded to the BWS shall be excess and non-contributing;
 3. All insurance required herein shall be provided by insurers authorized to do business in the State of Hawaii and with a current Best's rating of not less than A-, or otherwise as approved by the BWS.
 4. Except for Professional Liability,, all insurance required herein shall be written on an "Occurrence" form of policy, unless otherwise specifically approved by the BWS.
- C. Subcontractors Insurance. Contractor shall either:
1. Include all subcontractors as insureds under all insurance set forth in 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.
- D. 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.
- E. 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 Contractor to maintain insurance as required in this paragraph, then Contractor shall bear all reasonable costs properly attributable to that failure.
- F. 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 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 these General Conditions.
 3. With respect to continuing insurance as required under 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.
- G. Endorsements; Other Requirements

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

1. Name the "Board of Water Supply" 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, City and County of Honolulu, 630 South Beretania Street, Honolulu, Hawaii, 96843; and
 3. Include the Contract and project numbers, and name of the project.
- H. 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. 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.
- I. No Representation of Coverage Adequacy. By requiring insurance herein, the BWS 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.
- J. The BWS reserves the right to require additional kinds or amounts of insurance, as may be mutually agreed upon from time to time.

19. **INTERPRETATION.** In case of any doubt as to the meaning of any provision contained in the Contract, the Manager or authorized representative's interpretation of the provision shall control. All directions and explanations required to complete the Contract shall be given by the Manager or authorized representative.
20. **PRECEDENCE.** In the event of a conflict among these Terms and Conditions and the other documents that comprise the Contract, such other documents shall take precedence over these Terms and Conditions.
21. **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.
22. **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.
23. **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. The Contractor shall be an equal opportunity employer.
24. **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.
25. **CONFIDENTIALITY.** All information, data, or other 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. All information, data, or other material provided by the Contractor to the BWS shall be subject to the Uniform Information Practices Act, HRS Chapter 92F. All information, data, or other material that Contractor regards as proprietary or confidential shall be expressly designated as such by Contractor prior to submission to the BWS. The provisions of this section shall remain in full force and effect notwithstanding the expiration or early termination of the Contract.

26. **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.
27. **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' right to enforce the same in accordance with the Contract.
28. **NO PARTY DEEMED DRAFTER.** No party shall be deemed to be the drafter of the Contract. The Contract is the product of arms length negotiations between the parties and therefore shall be deemed to have been drafted jointly by the parties.
29. **HEADINGS.** The headings of paragraphs in these Terms and Conditions are for convenience only. They form no part of the Contract and shall not affect its interpretation.
30. All words used in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. All words used in any gender shall extend to and include all genders.