

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION
400 Rodgers Boulevard, Suite 700
Honolulu, Hawaii 96819-1880

AO 1125-14
9/10/10
BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
JIRO A. SUMADA

IN REPLY REFER TO

AIR-EC
10.0406

September 10, 2010

Mr. Wesley R. Segawa
President
Wesley R. Segawa & Associates, Inc.
101 Silva Street, Suite 201
Hilo, Hawaii 96720

Dear Mr. Segawa:

Subject: Relocate IIT Maintenance Facility, Support Facilities Site Prep - Elliott Street, and
Relocate IIT Cargo Facilities
Honolulu International Airport
State Project Nos. AO1125-14, AO1125-15, and AO1127-17
Contract No. 59449

Enclosed for your files are two executed copies of Contract No. 59449, dated June 30, 2010, for the subject project.

Should you have any questions, please have your staff contact Mr. Greg Garcia, State Project Manager, at (808) 838-8068.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey Chang".

Jeffrey Chang
Engineering Program Manager

Enclosure: Contract No. 59449



STATE OF HAWAII

CONTRACT FOR PROFESSIONAL SERVICES

CONTRACT NO. 59449

This Contract, executed on the respective dates indicated below, is effective as of June 30, 2010, between DEPARTMENT OF TRANSPORTATION, State of Hawaii ("STATE"), by its Director of Transportation (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 869 Punchbowl Street, Honolulu, Hawaii 96813 and WESLEY R. SEGAWA & ASSOC., INC. ("CONTRACTOR"), a Corporation under the laws of the State of Hawaii, whose business address and federal and state taxpayer identification numbers are as follows: 101 Silva Street, Suite 201, Hilo, HI 96720; Federal ID No. 99-0218491

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the services described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said services.

B. This Contract is for professional services as defined in section 103D-104, Hawaii Revised Statutes ("HRS").

C. Money is available to fund this Contract pursuant to:

(1) Act 158, SLH 2008 and Act 162, SLH 2009 (Identify state sources)

or (2) (Identify federal sources)

or both, in the following amounts: State \$ 4,321,484.00 Federal \$

D. Pursuant to 103D-304, HRS, the STATE is authorized to enter into this Contract.

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the services set forth in Attachment-S1, which is made a part of this Contract.

2. Term of Contract. This Contract starts on and ends on with option(s) to extend for each. References.

3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Contract for a total amount not to exceed FOUR MILLION THREE HUNDRED TWENTY-ONE THOUSAND FOUR HUNDRED EIGHTY-FOUR DOLLARS

(\$ 4,321,484.00), including approved costs incurred and taxes, according to the Compensation and Payment Schedule set forth in Attachment-S2, which is made a part of this Contract.

4. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

5. Standards of Conduct Declaration. The Standards of Conduct Declaration by the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of ZERO AND NO/100 DOLLARS (\$ 0.00) per day, in accordance with paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in this Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

Francis Paul Keeno
(Signature)

for BRENNON T. MORIOKA, Ph.D., P.E.
(Print Name)

Director of Transportation
(Print Title)

6/30/10
(Date)

CONTRACTOR

Wesley R. Segawa & Associates, Inc.
(Name of Contractor)

Wesley R. Segawa
(Signature)

Wesley R. Segawa
(Print Name)

President
(Print Title)

JUN 25 2010
(Date)

CORPORATE SEAL
(If available)

APPROVED AS TO FORM:

[Signature]

Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.

CONTRACT CERTIFICATION

59449

I hereby certify that there is an appropriation balance in the account(s) named below for this Contract No. _____
with WESLEY R. SEGAWA AND ASSOCIATES, INC.

APPROPRIATION	(*)	AMOUNT
631 B 08 751 D HIA, Elliott St Support Fac, Oahu-Cons		4,321,484.00

* Federal funds, as received. Sec. 103D-309, H.R.S.

Dated August 4, 2010



Comptroller
State of Hawaii

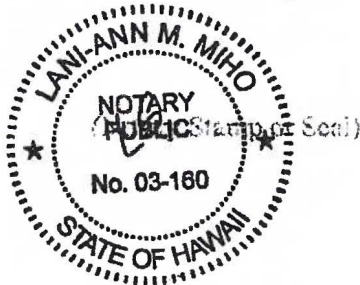


STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Hawaii)
) SS.
COUNTY OF Hawaii)

On this 25th day of June, 2010 before me appeared
Wesley R. Segawa, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
President of
Wesley R. Segawa & Associates, Inc., the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said
instrument as the free act and deed of the CONTRACTOR.

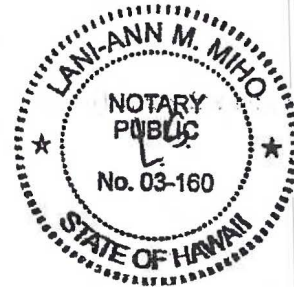


[Signature]
(Signature)
LANI-ANN M. MIHO
(Print Name)
Notary Public, State of Hawaii
My commission expires: MAR 23 2011

Doc. Date: JUN 25 2010 # Pages: 52
Notary Name: LANI-ANN M. MIHO 3rd Circuit
Doc. Description: In professional services

[Signature]
Notary Signature Date: JUN 25 2010

NOTARY CERTIFICATION





STATE OF HAWAII
CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of Wesley R. Segawa & Associates, Inc., CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR is* is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

*Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By Wesley R. Segawa
(Signature)
 Print Name Wesley R. Segawa
 Print Title President
 Name of Contractor Wesley R. Segawa & Associates, Inc.
 Date JUN 25 2010



STATE OF HAWAII SCOPE OF SERVICES

1.1 General.

The STATE desires to engage the CONTRACTOR to perform General Engineering Services for Construction Management for the construction of the Terminal Modernization Program's (hereinafter referred to as the "HNL TMP") "Relocate IIT Maintenance Facility, Support Facilities Site Prep – Elliott Street, and Relocate IIT Cargo Facilities, State Project Nos. AO1125-14, AO1125-15 and AO1127-17" at the Honolulu International Airport, (hereinafter referred to as the "Project"). This Project is a Design-Build project.

A. **HNL TMP Relocate IIT Maintenance Facility**
State Project No. AO1125-14

Work under this Project includes approximately 275,000 square feet, inclusive of wide body hanger, approximately 150,000 square foot under an engineered, fabric roof structure as well as approximately 125,000 square foot encompassing , maintenance shops, supply and management offices warehouse and GSE shops, controlled materials and fire protection pump house.

This Project is registered under LEED 2.2.

B. **HNL TMP Support Facilities Site Prep – Elliott Street**
State Project No. AO1125-15

Work under this Project includes all site work preparation for cargo/maintenance complex and future facilities. Site Improvements to include modifications to AOA security fence, taxiway edge lighting, relocation of existing dry and wet utilities, relocation of fuel loading rack, temporary relocation of parking. Site improvements also include all grading, pavements, and utilities within project limits. Existing buildings to remain operational during construction.

C. **HNL TMP Relocate IIT Cargo Facilities**
State Project No. AO1127-17

Work under this Project includes two story structure with mezzanine, with recessed truck docks, and at grade truck docks.

This Project is registered under LEED 2.2.

1.2 Review by STATE.

Monthly reviews will be made by the STATE to inspect and review the work progress for the Project and to ensure that all work by the CONTRACTOR complies with the STATE's policies and other requirements.



STATE OF HAWAII
SCOPE OF SERVICES

1.3 Data and Work to be furnished by the State.

The STATE will furnish at no cost to the CONTRACTOR, three (3) sets of half-size plans and specifications for this Project, including any addendums, and one (1) CD-ROM containing the pdf files of the plans and specifications. The CONTRACTOR shall be responsible to reproduce any additional sets required for the CONTRACTOR's use, including any full size plans.

The CONTRACTOR shall be responsible to perform the search of existing record drawings or reports required for the Project, including searches necessary for outage requests.

1.4 Field Office.

Pending the availability of space on airport property, the STATE will issue a permit to the CONTRACTOR for the use of the space, at no charge, to be used specifically for a field office. However, if space is unavailable for a field office at the airport, the field office may be located outside the Airport at the STATE's discretion. If the field office is located outside the Airport, it shall be a maximum of ten (10) minutes from the Project site.

The location, type, and size of space and the terms and conditions of the use of the space for the field office shall be determined by the STATE.

Any delays in the availability of the space for occupancy by the CONTRACTOR shall not be construed as a reason for the CONTRACTOR not to perform its duties, responsibilities and obligations under this Agreement.

The use of the space as defined under the permit and modified herein or as directed by the STATE, shall be at the CONTRACTOR's expense. Repair of items as a result of ordinary wear and tear shall be at the CONTRACTOR's expense. The CONTRACTOR shall replace items with items of an equal or higher quality. All expenses incurred by the CONTRACTOR shall not be assessed back to the STATE.



STATE OF HAWAII SCOPE OF SERVICES

1.5 Contractor's Personnel.

The CONTRACTOR shall staff the Project in accordance with the organizational chart submitted in response to the Construction Management Services Questionnaire during the consultant selection procurement process.

The Airports Division will have the authority to request that certain employee(s) be added and/or deleted from the organizational chart. If a request is made to delete employee(s), those employee(s) shall be promptly replaced with another employee(s) subject to the Airports Division's approval.

Employee(s) shall not be replaced, unless they are no longer employed by the CONTRACTOR, and their replacement shall be subject to the Airports Division's approval. Such requests shall be submitted in writing to the STATE for acceptance. The written request shall explain why the employee is not available and shall include a resume and certified payroll records of the new employee. The replacement employee shall be qualified with a work classification and pay rate equal to or higher than the original employee proposed for the Project. If the CONTRACTOR proposes an employee with a higher pay rate, the STATE will be assessed the same pay rate as the original employee being replaced.

The CONTRACTOR shall not disrupt or delay the progress of the Project during the transition to the replacement employee and assure the STATE that the Project will be completed on schedule.

1.6 Work by Contractor.

The STATE has classified the Construction Management Services for the Project into three (3) basic phases, namely:

1. Pre-Construction Services;
2. Construction Administration and Inspection Services; and
3. Post Construction Services



STATE OF HAWAII SCOPE OF SERVICES

The CONTRACTOR shall consult with the STATE to ascertain and verify the requirements of the Project for each phase. The CONTRACTOR shall perform the following services as described below (hereinafter called the CONTRACTOR's "Work"), and shall follow the policies and procedures set forth in the STATE Airport Division's CM Manual which is available from the STATE at no charge.

1.7 Pre-Construction Services.

During this phase, the CONTRACTOR shall provide services in accordance with the following:

1. Provide a technical review of the Design-Build Request for Qualifications and Request for Design and Price Proposals solicitation documents (hereinafter referred to as the "Bridging Documents"), including construction phasing and constructability issues. Review shall ensure compliance with STATE procurement regulations.
2. Attend meetings with the STATE, other stakeholders and the Bridging Document Team, including the Pre-Bid meeting.
3. Coordinate the distribution of design submittals (plans and specifications) with the STATE, other stakeholders, and the Bridging Document Team.
4. Provide a technical review of the Construction Contractor's Design-Build Team (hereinafter referred to as the "Construction Contractor") design submittals, including construction phasing and constructability issues. Review shall ensure compliance with the Bridging Documents. All comments to the design submittals from the STATE, other stakeholders, and the Bridging Document Team will be consolidated by the CONTRACTOR and forwarded to the Construction Contractor.
5. The Construction Contractor's final design submittal to be used for construction is hereinafter referred to as the "Design-Build Documents".



STATE OF HAWAII SCOPE OF SERVICES

6. Assist with the tracking of permits submitted during the pre-construction phase including but not limited to, utility company agreements, and other State, County, and Federal permits.
7. Take Pre-Construction photos to record the existing condition of the Project site; including adjacent roads, sidewalks, structures, landscaping, etc.
8. Accompany the STATE and/or Bridging Document Team on site visits.

1.8 Construction Administration and Inspection Services.

During this phase, the CONTRACTOR shall provide services in accordance with the following:

A. Bridging Document Team:

1. The CONTRACTOR shall be responsible to ensure the construction is done in accordance with the final design.
2. The CONTRACTOR shall retain the services of the Bridging Document Team, lead by AvAirPros, (hereinafter referred to as the "Bridging Document Team") to ensure that the final design does not compromise the intent of the RFQ and to lead the coordination efforts with the tenant. The Bridging

Document Team consists of the following firms:

- a. AvAirPros – Project Management
 - b. MCA Architects - Architectural
 - c. Moss Engineering, Inc. - Electrical
 - d. Beall & Associates, Inc. - Mechanical
 - e. R.M. Towill Corporation - Civil
 - f. Brightworks – LEED Facilitator
 - g. InSynergy Engineering – Commissioning Agent
3. The CONTRACTOR and the Bridging Document Team's lead representative shall occupy the same field office trailer, and shall closely work side by side, to ensure both parties are fully aware of the progress of the Project.



STATE OF HAWAII
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4. The CONTRACTOR shall be responsible to make payment for the Bridging Document Team's services during construction.
5. The CONTRACTOR will not be responsible for any work done by each of the members of the Bridging Document Team. This provision does not alter any duty on the part of the members of the Bridging Document Team, either individually or collectively, with respect to the STATE for their work on the Project.

B. Construction Support Services and Coordination:

1. The CONTRACTOR shall conduct the Pre-Construction Meeting with representatives from the STATE, the Construction Contractor, the Bridging Document Team, the Federal Aviation Administration (FAA), the Transportation Security Administration (TSA), and any other State, Federal and County Agencies involved with the Project. The CONTRACTOR shall record meeting minutes and distribute the meeting minutes to all attendees. The meeting minutes are subject to acceptance by the STATE prior to distribution.
 - a. The CONTRACTOR shall establish strict protocols with the Construction Contractor regarding their ability to monitor the requirements of Subsection D - Interpretation of Bridging Documents below.
2. Record construction activities by color images for progress reports and archiving using digital media. Printouts of images with captions to be included in the Monthly Progress Reports.
3. The CONTRACTOR shall maintain an e-mail address with an Internet service provider for purposes of communication with the STATE for the duration of



STATE OF HAWAII SCOPE OF SERVICES

this Agreement. The set-up and maintenance of the internet service shall be included in the CONTRACTOR's overhead costs.

4. The CONTRACTOR shall ensure that the Construction Contractor complies with all State, Federal and County laws and regulations required for the Project. This includes verifying that the Construction Contractor has obtained all required permits for the Project. The CONTRACTOR shall provide the STATE a list of all required permits along with copies of the permits.
5. Prepare general correspondence as directed by the STATE.

C. Coordinate as necessary, the performance of work with the following:

1. State Department of Transportation and other State, County and/or Federal agencies not identified below.
2. Federal Aviation Administration (If applicable).
3. Transportation Security Administration (If applicable).
4. Airline representatives and/or other Airport tenants and users.
5. Bridging Document Team and other STATE consultants and their subconsultants.
6. Contractors of other projects that may impact the Project.
7. Water, telephone and electrical utility companies (If applicable).
8. Other public officials or users as required by the STATE.

D. Interpretation of Bridging Documents:

1. The CONTRACTOR shall ensure that the Construction Contractor does not compromise the intent of the Bridging Documents by altering the final Design-Build Documents.



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2. The CONTRACTOR shall, but not limited to:
 - a. Coordinate the processing of clarification requests and Requests for Information (RFI's) between the Construction Contractor and it's design team and/or with the Bridging Documents Team. The CONTRACTOR shall maintain a log of all Construction Contractor RFI's.
 - b. Coordinate the review of shop drawings and material submittals between the Construction Contractor and it's design team and/or with the Bridging Documents Team. The CONTRACTOR shall review all submittals for conformance to the Bridging Documents and maintain a submittal log of all Construction Contractor shop drawings and material submittals.
 - c. Coordinate the review of all substitution requests between the Construction Contractor and it's design team and/or with the Bridging Documents Team.
3. The CONTRACTOR shall provide clarification on Project problems regarding installation responsibility, coordination of work, scheduling conflicts, unforeseen site conditions, storage of materials and equipment, equipment use, housekeeping, protection of installed work, safety, etc. as they relate to the Bridging Documents.

E. Construction Scheduling and Progress Monitoring:

1. The CONTRACTOR shall be responsible to **conduct weekly progress meetings with the Construction Contractor unless directed otherwise by the STATE.** The CONTRACTOR shall conduct additional meetings as required. The CONTRACTOR shall be responsible for recording the meeting minutes and distributing to all attendees, including the Bridging Document Team.



STATE OF HAWAII SCOPE OF SERVICES

Prior to finalizing the Weekly Progress Meeting Minute, the CONTRACTOR shall submit a draft to the STATE for review and acceptance. The Progress Meeting minutes shall include, but not be limited to the following:

- a. Project Information Section. Include the date of meeting, time, Project Title, Project No., location of meeting, meeting attendance log, and subject.
- b. Project Report Section.
 - 1) Project Status information. Include the Notice to Proceed Date, original and Contract time, original and revised completion date, calendar or working days to date, remaining working or calendar days, percent complete, etc. Include funding information such as original Contract amount, contingency amount, additional as amended, revised contract amount, Change Orders, anticipated Change Orders, amount billed to date, etc.
 - 2) **Work accomplished since last meeting.**
 - 3) **Work anticipated next period.**
- c. Detailed chronological listing of old and new business with actions taken.
- d. Request for information log.
- e. Submittal log.
- f. **Cost proposals.**
- g. Field order log.
- h. **Change order log.**
- i. Reminders to the Construction Contractor and critical issues to be addressed.



STATE OF HAWAII SCOPE OF SERVICES

- j. Next meeting date.
2. The CONTRACTOR shall ensure that the FAA Construction Safety Plan and Construction Security Compliance Plan are submitted to the STATE prior to any construction activities commencing. Template to be provided by the STATE.
3. Review the Construction Contractor's work schedules to ensure timely Project completion and minimum interference with Airport operations.
 - a. For all utility and operational outage requests from the Construction Contractor, the CONTRACTOR shall coordinate with the STATE. Major outage requests impacting critical airport operations should include the following:
 - i. site plan (barricade plan, detours, shut-off valves, fire hydrants if necessary, etc.).
 - ii. safety plan (security guards if required, security guard locations).
 - iii. detailed schedule broken down by hour.
 - b. The CONTRACTOR shall conduct meetings with the STATE's Facilities Maintenance Section to ensure that the work has been thoroughly planned, operational impacts have been addressed, affected tenants have been notified in advance, and a backup plan has been considered, including having any STATE's maintenance service contractors on-call.
 - c. The CONTRACTOR shall be present, at all times, during all utility and operational outages.



STATE OF HAWAII SCOPE OF SERVICES

- d. The CONTRACTOR shall attend all pre-activity meetings conducted by the Construction Contractor and generate the meeting minutes for the distribution.
 - e. If the work is related to airfield operations, the CONTRACTOR shall attend the Airfield Coordination meetings with the STATE.
4. Require the Construction Contractor to update construction schedules as specified in the Bridging Documents.
 5. Document and inform the STATE of any deficiencies in the Construction Contractor's scheduling or progress which will impact timely completion of the Project.
- F. Safety:
1. Safety is strictly the responsibility of the Construction Contractor. However, the CONTRACTOR shall monitor all construction operations for the protection of Airport employees and the general public. If the CONTRACTOR observes any unsafe conditions or unsafe acts, the CONTRACTOR shall immediately notify the Construction Contractor.
- G. Quality Control:
1. The CONTRACTOR's role is to provide quality assurance, including but not limited to:
 - a. Require the Construction Contractor to establish and follow quality control programs as specified in the Contract Bid Documents.
 - b. Observe the work, materials going in place and witness tests to ensure all are in compliance with the Contract Bid Documents, applicable codes and good construction practices.



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c. Obtain and review certified copies of all test results from the Construction Contractor.

2. With the approval of the STATE, the CONTRACTOR shall retain the services of any special inspectors, as required.

3. The CONTRACTOR shall perform their own independent tests, as necessary, to verify and/or confirm the Construction Contractor's test results.

H. Materials Receiving:

1. Maintain accountability and status records.

2. Check materials for conformance with the Bridging Documents.

I. Construction Changes and Claims:

1. Since this Project is a Design-Build project, the CONTRACTOR shall determine whether a construction change and/or claim is valid (i.e. due to unforeseen conditions, owner requested changes, etc.) versus one that should be the responsibility of the Construction Contractor.

2. Maintain adequate and accurate records of facts, materials, labor and equipment associated with any potential claim or dispute. Alert the STATE of any potential claim or dispute.

3. Conduct meetings with Construction Contractor as required to resolve all disputes and disagreements.

4. Review and submit recommendations to the STATE regarding the validity of all Construction Contractor claims for extra monies or time.

5. Prepare for review and approval by the STATE all Field Orders, Change Orders, etc. relating to valid construction changes for the Project. Items requiring revisions to the Design-Build Documents shall be referred to the STATE. For all cost changes, the CONTRACTOR shall prepare detailed



STATE OF HAWAII SCOPE OF SERVICES

cost estimates and negotiate cost changes with the Construction Contractor, and make recommendations for approval to the STATE. The CONTRACTOR shall include detailed cost estimates showing the Construction Contractor's estimate, the CONTRACTOR's estimate and the negotiated amount along with all approved Field Orders with each Change Order.

J. Labor Compliance:

1. The CONTRACTOR shall perform periodic checks throughout the Project on the Construction Contractor's labor forces. Employees of the Construction Contractor and their Subcontractors shall be selected at random on a monthly basis and checked for compliance with the Davis Bacon Act wage rates (Federal projects only) or the Department of Labor and Industrial Relations (DLIR) wages and administrative rules. The CONTRACTOR shall complete the Labor Compliance Employee Interview Form for each employee that is interviewed and maintain a record for the duration of the Project. Throughout the Project, the CONTRACTOR shall obtain representative samples for all labor classifications from the Construction Contractor and all of their Subcontractors.
2. For Federal projects, the CONTRACTOR shall conduct, at least, one Labor Compliance Inspection Audit of the Construction Contractor and its Subcontractors.
3. The CONTRACTOR shall review certified payrolls from the Construction Contractor and their Subcontractors, checking for compliance with the DLIR wage requirements and administrative rules. The certified payroll submittal shall have attached a "Statement of Compliance" or "Payroll Affidavit."



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Payrolls shall be submitted for the entire duration of the project, whether or not work was performed. For periods of no work activities, the Construction Contractor shall submit an affidavit stating "No work performed" signed by the appropriate authority. All Certified Weekly Payrolls shall be clearly numbered with the last one noted as "Final".

K. Updating Design-Build Documents:

1. The CONTRACTOR shall ensure that the Construction Contractor posts on a daily basis, all field changes to the Design-Build Documents. All changes shall be clearly red-lined and shall contain detailed information as to the locations and depth of existing and new utilities. The CONTRACTOR shall check the accuracy of all changes.

L. Construction Contractor Progress Payments:

1. Review Construction Contractor's Schedule of Values. The Schedule of Values shall be broken into sufficient details to facilitate the continuous evaluation of the Construction Contractor's progress payments and Project progress.
2. Determine and/or verify quantities and prepare the Monthly Progress Payment Requests for the Construction Contractor. Monthly Progress Payment Requests shall be in the format provided by the STATE.
3. Determine final quantities for unit price Contract Bid items.

M. Records:

1. The CONTRACTOR shall have the capability, at no cost to the STATE, to maintain all records electronically. All records shall be scanned in pdf format, be of a high quality scan, and named in a nomenclature format to be provided by the STATE.



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- a. Only scans of documents consisting of sheet sizes larger than 11" x 17" shall be reimbursed in accordance to Section 2.2 – Contractor's Reimbursable Costs of Attachment S2 of this Agreement.
2. Records to be maintained by the CONTRACTOR include, but are not limited to the following:
- a. Meeting minutes: Pre-Construction, weekly construction meetings, etc.
 - b. Project correspondences. Separate correspondences involved with the Project such as the Construction Contractor, Subcontractors, City and STATE Agencies, FAA, Bridging Document Team, etc.;
 - c. Test records and reports;
 - d. Shop drawings;
 - e. Submittal logs;
 - f. Request for information (RFI) logs;
 - g. Submittals;
 - h. Submittal samples;
 - i. Field Orders;
 - j. Change Orders;
 - k. Cost proposals;
 - l. Certified payrolls from the Construction Contractor/Subcontractors;
 - m. Operation and Maintenance Manuals;
 - n. Monthly Progress Payment Requests;
 - o. Inspection records. Daily and weekly inspections;
 - p. Outage Requests;
 - q. Punchlists;
 - r. Construction Contractor's Record Drawings;



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- s. FAA Construction Safety Plan and Construction Security Compliance Plan;
 - t. Construction Site Runoff Control Program;
 - u. DOH Hazard Evaluation & Emergency Response;
 - v. LEED submittals; and
 - w. Warranties of construction. Prepare a summary report of all warranty items containing manufacturers, suppliers, addresses, e-mail addresses, contact name(s), phone and fax numbers, and duration of warranty including start and finish dates, for each item. Attach manufacturer's warranty for each warranty item.
3. Prepare daily inspector's reports to include the following:
- a. Weather conditions;
 - b. Construction activities (including notations on the precise location of the work.);
 - c. Difficulties encountered;
 - d. Controversial matters (disputes, questionable items, etc.);
 - e. Deficiencies and violations (construction, construction site runoff, safety, labor, etc.);
 - f. Instructions given and received;
 - g. Progress information (report all delays, action taken, etc.);
 - h. Equipment (indicate arrival at the site and shipment by manufacturer, model, serial number and capacity. Indicate equipment in use and comment on reasons for idle equipment.); and
 - i. Record tests and results thereof.
 - j. Key photos.



STATE OF HAWAII SCOPE OF SERVICES

4. Prepare weekly statements of working days (If applicable).
5. Prepare Monthly Progress Report. Prior to finalizing the Monthly Progress Report, the CONTRACTOR shall submit a draft to the STATE for review and acceptance. Items in the report shall include, but are not limited to the following:
 - a. Cover sheet. Include the Project Title, Project No., AIP Project No. (If applicable), Airport, title of the report (Monthly Progress Report), month and year of the report, prepared for, prepared by and date report was prepared;
 - b. Table of contents;
 - c. Executive Summary. Provide overall summary of construction work activities for the previous month and for each definable feature of work including change order work. Include information on the Project progress status such as the contractor's name, contract amount, dollar amount expended to date, time elapsed, original and revised completion dates, remaining contract time, percent complete, etc. Include information on the average daily manpower used for the Construction Contractor and subcontractors. List the type of equipment used. Describe the weather conditions;
 - d. Site plan;
 - e. Color Xerox pictures with narratives for each picture. The number of pictures shall be determined by the STATE;
 - f. Latest Schedule of Values; and
 - g. Latest Submittal, Request for Information (RFI) and Field Order logs, with each log showing the status of each entry. Each log shall indicate



STATE OF HAWAII
SCOPE OF SERVICES

potential problems/issues that could lead to possible claims by the Construction Contractor.

6. If the Project involves Contractor Quality Control (CQC) specifications, the CONTRACTOR shall be responsible to ensure that the Construction Contractor complies with all requirements of the CQC specifications.

N. Referenced Documents:

1. The CONTRACTOR shall comply with the requirements of the following referenced documents and its amendments, all of which are incorporated by reference as though fully set forth herein, which can be downloaded at <http://hawaii.gov/dot/airports/doing-business>:
 - a. Contractor's Training Guide for Oahu District Airports, dated July 2007.
 - b. Section C – Construction Site Runoff Control Program.

O. DOH Hazard Evaluation & Emergency Response (HEER):

1. The CONTRACTOR shall comply with the requirements of this document and its latest amendments, all of which are incorporated by reference as though fully set forth herein, which can be downloaded at <http://hawaii.gov/health/environmental/hazard/pdf/ealvolume1mar2009.pdf>, <http://hawaii.gov/health/environmental/hazard/eal2005.html>, and the Technical Guidance Manual at <http://www.hawaiidoh.org/>.

P. LEED:

1. If the Project is registered for the Leadership in Energy and Environmental Design (LEED) certification, the CONTRACTOR shall assist the Bridging Document Team's LEED Facilitator and Commissioning Agent to ensure the Construction Contractor has all the required documentation necessary for the LEED construction credit submittals.



STATE OF HAWAII SCOPE OF SERVICES

1.9 Post Construction Services.

During this phase, the CONTRACTOR shall provide services in accordance with the following:

A. Project Close Out:

1. Conduct the Final Inspection with the STATE, the Construction Contractor, the Bridging Document Team, the FAA, and other agencies required to participate. The CONTRACTOR shall prepare a punchlist of all deficient items and substandard work and distribute the punchlist to all attendees. The CONTRACTOR shall continue inspection services until all punchlist items are completed by the Construction Contractor.
2. Review Record Drawings from the Construction Contractor and submit to the STATE for acceptance.
3. The CONTRACTOR shall submit, to the STATE, the scans of all project files on CD-ROM(s). Some project files may also be requested to be submitted in hard copy. Project files may include, but not limited to the following:
 - a. Operations and maintenance manuals, guarantees/warranties summary data to be compiled in three-ring binders. Sample to be submitted to the STATE prior to finalizing the binders.
4. Transfer to the STATE, at the CONTRACTOR's expense, all STATE equipment and records to a location designated by the STATE.
5. Turn over contract maintenance monitoring responsibilities to the STATE. During the warranty period, the CONTRACTOR shall monitor and coordinate with the Construction Contractor all warranty work items. The CONTRACTOR shall ensure that all deficient items are corrected immediately by the Construction Contractor.



STATE OF HAWAII

SCOPE OF SERVICES

1.10 Risk Allocation.

In providing services under this Agreement, the CONTRACTOR shall endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession. The CONTRACTOR shall exercise good judgment when inspecting and accepting the Construction Contractor's work. Although the Construction Contractor's work may be performed in accordance with the Design-Build Documents, the CONTRACTOR shall not accept any work if the work results in an unsafe condition or goes against good architectural/engineering design practices. It shall be the CONTRACTOR's responsibility to bring to the STATE's attention any work performed in accordance with the Design-Build Documents that result in an unsafe condition or goes against good architectural/engineering design practices.

Any claim(s) against the State resulting from an "obvious" unsafe condition may be tendered back to the CONTRACTOR. Example of an "obvious" unsafe condition - a person falls due to the difference between two finish floor elevations that results in a tripping hazard.

Any construction contract change order cost(s) attributed to the CONTRACTOR's errors and/or omissions or accepting the Construction Contractor's work, although performed in accordance with the Design-Build Documents, but went against good architectural/engineering design practices may be the responsibility of the CONTRACTOR. Example of work not in accordance with good architectural/engineering design practices - site grading gets revised during construction that results in sections of drainage pipes having reversed slopes.

1.11 Limitation of Contractor's Authority.

In performing the work under this Agreement, the CONTRACTOR shall have no right or power or authority to make any covenants, representations or commitments incurring obligations or liabilities of any kind whatsoever in the name of the STATE.



STATE OF HAWAII
SCOPE OF SERVICES

1.12 Conflicts.

This Attachment S1 (Scope of Services) shall have precedence over these Special Conditions which shall have preference over the General Conditions.



STATE OF HAWAII COMPENSATION AND PAYMENT SCHEDULE

2.1 Compensation and Payment Schedule.

Services rendered under this Agreement shall include the following projects.

- A. HNL TMP Relocate IIT Maintenance Facility
Project No. AO1125-14
- B. HNL TMP Support Facilities Site Prep – Elliott Street
Project No. AO1125-15
- C. HNL TMP Relocate IIT Cargo Facilities
Project No. AO1127-17

The STATE shall make available to the CONTRACTOR an allowance not to exceed FOUR MILLION AND NO/100 DOLLARS (\$4,000,000.00), inclusive of the State of Hawaii General Excise Tax as full compensation for the satisfactory completion of all work required to be performed by the CONTRACTOR for Phase 1 - Pre-Construction Services, Phase 2 - Construction Administration and Inspection Services, and Phase 3 - Post Construction Services, as described in Attachment S1 of this Agreement.

The CONTRACTOR shall not be authorized to proceed with the Project until the STATE issues a written Notice to Proceed to the CONTRACTOR, which issuance is conditioned upon the availability of adequate funds and a fully executed Contract between the STATE and the CONTRACTOR, setting forth the scope of work, time schedule, hourly rates, and total compensation payable for the completion of the work required for the Project.

The STATE shall pay the CONTRACTOR for services performed for the Project at the following agreed rates of pay:

<u>Personnel</u>	<u>Hourly Rate</u>
Construction Manager	\$ 154.71
Project Engineer	\$ 114.30
Construction Inspector I	\$ 87.00
Construction Inspector 2	\$ 85.34
Clerical	\$ 55.19



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

The hourly rate shall be inclusive of all labor, materials, equipment, overhead, profit and taxes.

The CONTRACTOR shall maintain time records indicating the actual hours worked on the Project and shall submit to the STATE said time records on a monthly basis. Each payment request shall include the total available hours in the month and the total billable hours.

Payments made to the CONTRACTOR by the STATE shall be based on the time records required herein and as prescribed in Section 2.5 - Progress Payment of Attachment S2 of this Agreement.

Payments made to the CONTRACTOR by the STATE shall be as prescribed in Section 2.5 – Progress Payment of Attachment S2 of this Agreement.

Payment for Pre-Construction Services shall include services from the effective date of the Notice to Proceed to the CONTRACTOR to the effective date of the award of the construction contract to the Construction Contractor. However, should the construction award be delayed for reasons including, but not limited to, a bid protest, good faith efforts to resolve Disadvantaged Business Enterprise (DBE) issues or the time needed to encumber additional federal and/or State funds, the STATE will not compensate the CONTRACTOR during this delay time period. This delay time period is typically defined as the time period beyond the normal 60 calendar day time period for the STATE to award a project.

Payment for Construction Administration and Inspection Services shall include services from the effective date of the award of the construction contract to the Construction Contractor to the effective date of the final acceptance of the Project.

Payment for Post Construction Services shall include services from the effective date of the final acceptance of the Project to Project Close Out.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

2.2 Contractor's Reimbursable Costs.

An allowance of TWO HUNDRED SEVENTY-ONE THOUSAND FOUR HUNDRED EIGHTY-FOUR AND NO/100 DOLLARS (\$271,484.00) is hereby provided for the reimbursable costs for all work performed under this Agreement

All reimbursable expenses, except for reproduction expenses directly related to the Project (i.e. Monthly Progress Reports, Post Construction Documents, Record or 'As-Built' Drawings), shall be approved in writing by the STATE prior to the CONTRACTOR incurring such expense, with a brief statement as to the purpose sought and/or accomplished by such expenses.

All reimbursable expenses shall be the actual costs incurred by the CONTRACTOR, supported by the appropriate receipts and/or invoices, with a brief description for the expense. Any reimbursable expenses not supported by the appropriate receipts and/or invoices, or not receiving prior approval by the STATE will not be considered for reimbursement.

Any expense that the STATE considers to be part of the CONTRACTOR's overhead cost will not be considered as a reimbursable expense. At the STATE's request, the CONTRACTOR shall provide a copy of the CONTRACTOR's overhead calculations and any other documents, as requested, for the STATE to be able to determine the CONTRACTOR's overhead. Expenses that the STATE considers to be part of the CONTRACTOR's overhead cost include, but are not limited to the following:

1. Equipment purchase and lease expenses, including but not limited to cellular phones, pagers, and any office equipment/supplies.
2. General maintenance/Janitorial services of a field office.
3. Utility expenses, including communications and electrical services.
4. Vehicle lease expenses, vehicle rentals, and all vehicle related expenses.



STATE OF HAWAII
COMPENSATION AND PAYMENT SCHEDULE

Travel expenses (airfare, lodging, car rental, and per diem), if necessary, shall be limited to travel costs directly related to the Project and shall be subject to prior approval by the STATE. Travel expenses will be reimbursed as follows:

1. Airfare shall be coach fare or below. Charges associated with changes to flight schedules will not be reimbursed, unless caused by the STATE.
2. Lodging shall be limited to a maximum daily room rate of \$180 per night, excluding taxes. All other charges such as room services, movies, telephone calls, internet charges, laundry service or any other charges will not be reimbursed. If the departure day is on a weekend or State holiday, lodging on the day of departure will not be reimbursed.
3. Car rental shall be a mid-size car or below.
4. Per diem rate for meals shall be \$20 for arrival and departure days, \$45 for full days. Meal receipts are not required to be submitted.
5. Gas for rental car shall be regular unleaded and shall be limited to one refuel per week.
6. Hotel parking.
7. Transportation to/from and/or parking at the traveler's home airport.
8. Taxi or other ground transportation receipts shall show the date of service, and the "From" and "To". For example, "From HNL", "To Hotel".
9. Tips or gratuities are not allowed.
10. Expenses outside of the normal business hours will not be reimbursed.

The State shall have the right to disallow and/or reduce any travel expenses which are not directly related to the Project and/or have not met the above conditions.

When submitting travel expense reimbursement, the CONTRACTOR shall ensure that all expenses for a person's travel is submitted together in a single progress payment request.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

Once a travel expense reimbursement has been paid for by the STATE, the STATE will not reimburse the CONTRACTOR for late travel expenses, unless a travel expense was previously disallowed by the STATE and the CONTRACTOR now has the supporting appropriate receipts and/or invoices.

2.3 Extra Work.

An allowance of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) is hereby provided for any Change Order work performed under this Agreement. Payment for said extra work shall be determined in accordance with the General Conditions.

2.4 Scope of Payment.

Except as otherwise provided herein, the fee set forth in this Agreement shall be deemed full compensation for the completion of all work required to be performed by the CONTRACTOR under this Agreement, to the STATE's satisfaction, and shall cover all services, materials, supplies, equipment, overhead, profit, taxes and any other incidentals and operating expenses.

2.5 Progress Payment.

As long as the services of the CONTRACTOR are being performed in a manner satisfactory to the STATE, the STATE will pay the CONTRACTOR, unless otherwise indicated in this Agreement, monthly progress payments based upon the value of the services performed by the CONTRACTOR, as estimated by the CONTRACTOR and approved by the STATE.

Payment of the CONTRACTOR's Progress Payments shall be contingent on the CONTRACTOR submitting the following with each progress payment request.

1. Construction Contractor's Monthly CPM Schedule updates.
2. Monthly progress reports, as specified in Section 1.8 – Construction Administration and Inspection Services, Subsection M – Records of Attachment S1 of this Agreement.



STATE OF HAWAII
COMPENSATION AND PAYMENT SCHEDULE

3. Construction Inspection Checklists, included as part of Section C – Construction Site Runoff Control Program, as specified in Section 1.8 – Construction Administration and Inspection Services, Subsection N – Referenced Documents of Attachment S1 of this Agreement.

From the total amount ascertained as payable, an amount equivalent to five percent (5%) of each progress payment will be deducted and retained by the STATE until completion of all work required under this Agreement in a manner acceptable by the STATE. It is provided, however, that after fifty percent (50%) of the work has been completed, as determined by the STATE, the STATE may make any subsequent progress payments in full.

The CONTRACTOR shall submit progress payment requests only after the STATE has processed the previous progress payment. This will ensure that any corrections made on the previous progress payment have been incorporated in the subsequent progress payment request. The STATE will make every effort to process progress payment requests in a timely manner and immediately advise the CONTRACTOR if any questions arise

Progress payment shall not be construed as an absolute acceptance of the work done up to the time of that payment. The entire work is subject to final acceptance after the CONTRACTOR advises the STATE that the work required under this Agreement is fully completed.

2.6 Final Acceptance and Final Payment.

Upon satisfactory completion of all work in this Agreement and acceptance by the STATE, the STATE shall give written notice to the CONTRACTOR of final acceptance.

Final payment will be made only after the issuance of the notice of final acceptance by the STATE and submission by the CONTRACTOR of a current tax clearance certificate as stipulated in Section 17, Payment Procedures; Final Payment; Tax Clearance, of the General Conditions.

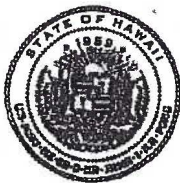


STATE OF HAWAII
COMPENSATION AND PAYMENT SCHEDULE

Acceptance by the CONTRACTOR of the final payment shall constitute payment in full for all work done.

2.7 Conflicts.

This Attachment S2 (Compensation and Payment Schedule) shall have precedence over these Special Conditions which shall have preference over the General Conditions.



STATE OF HAWAII
TIME OF PERFORMANCE

3.1 Agreement Time.

The CONTRACTOR shall commence work upon issuance of a written Notice to Proceed from the STATE and work shall terminate upon final acceptance by the STATE following the conclusion of the Project as specified in Attachment S1 of this Agreement. The three projects, HNL TMP Relocate IIT Maintenance Facility, Project No. AO1125-14; HNL TMP Support Facilities Site Prep - Elliott Street, Project No. AO1125-15; and HNL TMP Relocate IIT Cargo Facilities, Project No. AO1127-17 are advertised as one Project, and the estimated duration shall be as follows:

<u>PHASE</u>	<u>DURATION</u>
1. Pre-Construction Services	180 calendar days
2. Construction Administration and Inspection Services	637 calendar days
3. Post Construction Services	90 calendar days

3.2 Conflicts.

This Attachment S3 (Time of Performance) shall have precedence over these Special Conditions which shall have preference over the General Conditions.



STATE OF HAWAII
CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

Francis Paul Keeno
(Signature)

6/30/10
(Date)

for BRENNON T. MORIOKA, PH.D., P.E.
(Print Name)
DIRECTOR OF TRANSPORTATION
(Print Title)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
(2) There is no employee-employer relationship; and
(3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature)

(Date)

(Print Name)

(Print Title, if designee of the Director of DHRD)



STATE OF HAWAII
SPECIAL CONDITIONS

1.0 Designation of a Project Manager.

The HOPA shall designate in writing a representative to coordinate the work under this Agreement and to act as principal liaison between the CONTRACTOR and the STATE to resolve any questions, and to expedite decisions and progress reports. The CONTRACTOR shall designate in writing, with the approval of the HOPA, a project manager who will maintain close and frequent communications with the STATE's representative, and said project manager shall be experienced and qualified in the type of work involved and shall be directly responsible for the prosecution of the work under this Contract.

Every effort will be made by all parties to this Contract to retain the same liaison representatives during the term of this Contract in order to maintain continuity of effort and control.

2.0 Non-Liability of State Employees.

The HOPA and any of the HOPA's duly authorized representatives and subordinates, in carrying out the provisions of this Contract or in exercising any power or authority granted herein, shall not be held personally liable in any way, it being understood that in such matters they act as agents and representatives of the STATE.

3.0 Amend Paragraph 7 - Indemnification and Defense of the General Conditions to read as follows:

"7. Indemnification. The CONTRACTOR shall indemnify and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all reasonable attorney's fees, and all claims, suits, and demands therefore, arising out of or resulting from the negligent, reckless, intentional, or wrongful acts, errors, or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract."

4.0 All reference to "CPO" is amended to read "HOPA" in Paragraph 19 (Modifications of Contract), subparagraph g of the General Conditions.

GENERAL CONDITIONS

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GENERAL CONDITIONS

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

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

14. Termination for Convenience.

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

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

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

d. Compensation.

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

supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

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

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

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

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

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

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

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

21. Price Adjustment.

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

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

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

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

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

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

in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
 - a. Definitions.

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

 - (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or
 - (3) Account number, credit or debit card number, access code, or password that would permit

access to an individual's financial information.

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

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

b. Confidentiality of Material.

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

e. Records Retention.

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



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

CERTIFICATE OF VENDOR COMPLIANCE

This document presents the compliance status of the vendor identified below on the issue date with respect to certificates required from the Hawaii Department of Taxation (DOTAX), the Internal Revenue Service, the Hawaii Department of Labor and Industrial Relations (DLIR), and the Hawaii Department of Commerce and Consumer Affairs (DCCA).

Vendor Name: WESLEY R. <SEGAWA< AND ASSOCIATES, INC.
DBA/Trade Name: WESLEY R. <SEGAWA< AND ASSOCIATES, INC.
Issue Date: 06/24/2010
Status: Compliant
Hawaii Tax#: W20349410.01
FEIN/SSN#: 99-0218491
UI#: 0000472352
DCCA FILE#: 96876

Status of Compliance for this Vendor on issue date:

Form	Department(s)	Status
A-6	Hawaii Department of Taxation	Compliant
	Internal Revenue Service	Compliant
COGS	Hawaii Department of Commerce & Consumer Affairs	Compliant
LIR27	Hawaii Department of Labor & Industrial Relations	Compliant

Status Legend:

Status	Description
Exempt	The entity is exempt from this requirement
Compliant	The entity is compliant with this requirement
Pending	The entity is compliant with DLIR requirement
Submitted	The entity has applied for the certificate but it is awaiting approval
Not Compliant	The entity is not in compliance with the requirement and should contact the issuing agency for more information