

COUNTY OF MAUI
OFFICE OF COUNCIL SERVICES

February 4, 2020

REQUEST FOR PROPOSALS

SEALED OFFERS
FOR
Transcription Services
RFP No. 20-002OCS

SEALED COMPETITIVE PROPOSALS
TO BE RECEIVED BY 4:00 P.M. HST ON
March 5, 2020

OFFICE OF COUNCIL SERVICES
200 SOUTH HIGH STREET
WAILUKU, HAWAII 96793

QUESTIONS MAY BE DIRECTED TO:
TAMMY FRIAS, SUPERVISING COMMITTEE SECRETARY or
TRACI FUJITA, DIRECTOR OF COUNCIL SERVICES
(808) 270-7838
county.council@mauicounty.us

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SECTION ONE
INTRODUCTION AND KEY DATES

1.01 TERMS AND ACRONYMS USED THROUGHOUT THE REQUEST FOR PROPOSALS

BAFO	= Best and Final Offer
GET	= General Excise Tax
HAR	= Hawaii Administrative Rules
HRS	= Hawaii Revised Statutes
Procurement Officer	= The Director of Council Services (authorized representative of Council Chair, who has authority to enter into and administer contracts and make written determinations with respect thereto)
OCS	= Office of Council Services, on behalf of the County Council, County of Maui
Offeror	= Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an offer in response to this RFP
RFP	= Request for Proposals

1.02 INTRODUCTION

OCS is soliciting proposals to produce transcripts in a form that will serve as meeting minutes.

1.03 CANCELLATION

The RFP may be canceled and any or all proposals rejected, in whole or in part, without liability, when it is determined to be in the best interest of OCS.

1.04 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule set out herein represents OCS's best estimate for the processing of the RFP. If a component of this schedule, such as Proposal Due Date, is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Release of RFP	February 4, 2020
Due Date to Submit Written Inquiries	February 18, 2020
OCS's Response to Written Questions	February 25, 2020
Proposal Due Date	March 5, 2020 4:00 PM HST
Proposal Evaluations	As soon as practicable
Discussion With Priority Listed Offerors (if necessary)	March 10, 2020
BAFO (if necessary)	March 17, 2020
Notice of Award	As soon as practicable
Contract Start Date	June 30, 2020

SECTION TWO

BACKGROUND AND SCOPE OF WORK

2.01 PROJECT OVERVIEW AND HISTORY

- A. OCS provides staff assistance and administrative support to the Maui County Council, its committees, and Councilmembers. By law, written meeting minutes must be available to the public by the 40th day after a public meeting.
- B. Some minutes are prepared through a transcription services contract procured through the RFP process. Minutes may also be prepared by court reporters and OCS personnel.
- C. The number of minutes prepared by the transcription services Contractor varies. In recent months, transcription services have been used to produce approximately 14 meeting minutes per month.
- D. The current process, which is more fully described in Exhibit B, has been workable. OCS provides the Contractor with digital recordings of meetings, and the Contractor prepares transcripts conforming to OCS standards, in a digital format that is compatible with Microsoft Word 2016.
- E. Offerors may propose other processes, which will be considered. The process is subject to change, by mutual agreement.

2.02 SCOPE OF WORK

- A. The Contractor shall produce meeting transcripts from audio or video recordings as may be obtained by OCS. (See Exhibit B.)
Meetings are typically held in the County, and many commonly used terms and names (including locations) are derived from the Hawaiian language.
- B. Transcripts will conform to the format, conventions, and standards set by OCS.
- C. The time allowed for preparing each transcript shall be established in consideration of the 40-day legal deadline for the preparation of minutes and the need for OCS to review the transcript prior to receiving the final transcript.
- D. Subject to the foregoing, the Offeror shall follow a process that will efficiently produce high-quality, near-verbatim transcripts. The process must provide reasonable assurance to OCS that the transcripts are accurate and complete. The process will be as proposed by the Offeror but, from time to time, process changes may be implemented by mutual agreement between the Contractor and OCS.
- E. Notwithstanding the foregoing, from time to time, OCS may request an earlier delivery date if Contractor is agreeable, at a higher price.
- F. Recordings, computer media, transcripts, and computer files shall be the property of the County of Maui.
- G. The Contractor must certify to the accuracy and completeness of the transcript. A certification page must accompany transcripts submitted to OCS.

2.03 SERVICES NOT EXCLUSIVE

- A. If the Contractor is unable to perform all desired services during the contract term, OCS may secure the same services from other sources, or may secure similar services, with or without terminating the contract with the Contractor.
- B. During the contract term, OCS may or may not contract with other entities for transcription services.

2.04 TERM OF CONTRACT

- A. The contract shall be for a period beginning June 30, 2020 and ending June 29, 2021. The Contractor and OCS may extend the term of the contract, from time to time, for an aggregate of up to 48 months without the necessity of re-bidding, upon mutual agreement in writing at least 60 days prior to the expiration of the contract. The contract price or commission paid to the Contractor for the extended period shall remain the same but may be renegotiated for a lesser rate.
- B. When interests of OCS or the Contractor so require, OCS or the Contractor may terminate the contract for convenience by providing prior written notice of at least six weeks to the contracted parties.

SECTION THREE
PROPOSAL FORMAT AND CONTENT

3.01 ELEMENTS

The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP

Proposals must be organized into sections, with tabs separating each of the five sections listed below. Pages must be numbered.

- a. Transmittal letter. Use OFFER FORM OF-1.
- b. Experience and Capabilities. (See Section 3.02.)
- c. Proposal, Strategy, and Projected Timetable. (See Section 3.03.)
- d. Pricing. Use OFFER FORM OF-2. (See Section 3.04.)
- e. Exceptions. (See Section 3.05.)

3.02 EXPERIENCE AND CAPABILITIES

1. Provide copies of documents verifying that Offeror is registered to do business in the State of Hawaii and has a GET license.
2. Indicate the number of years Offeror has been in business and the number of years Offeror has performed services specified by this RFP.
3. Include a list of key personnel who will be dedicated to this project.
4. Include a list of three references from the Offeror's client list that may be contacted by OCS as to the Offeror's past and current job performance. Offeror shall provide names, titles, organizations, telephone numbers, email addresses, and postal addresses.
5. Provide a summary listing of judgments or pending lawsuits or actions and adverse contract actions, including termination, suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations, against your firm. If none, so state.
6. Provide sample projects or examples of written plans.

3.03 PROPOSAL, STRATEGY, AND PROJECTED TIMETABLE

Offeror shall submit a proposal that includes a strategy and projected timetable for the work proposed, as well as expected results and possible shortfalls.

3.04 PRICING

Proposed pricing shall be complete (e.g., including taxes and delivery charges). Pricing may specify rates (e.g., charge per page) to be applied to a measure of services delivered (e.g., number of pages). Prices shall not be subject to adjustment because of changing costs, indexes, or market values that are uncertain at the time of contracting.

3.05 EXCEPTIONS

Offeror shall list any exceptions taken to the terms, conditions, specifications, or other requirements listed herein. Offeror shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any.

SECTION FOUR

EVALUATION CRITERIA AND CONTRACTOR SELECTION

Evaluation criteria and the associated points are listed below. The award will be made to the responsible Offeror whose proposal is determined to be the most advantageous to OCS based on the evaluation criteria listed in this section. OCS reserves the right to accept or reject any or all of the proposals based upon the evaluation criteria.

The total number of points used to score this procurement is 100.

- 1) Cost of services (40)
- 2) Qualifications and experience (30)
 - a. Number of years in business and number of years performing services specified in this RFP
 - b. References
- 3) Project proposal (30)
 - a. Methodology
 - b. Expected results
 - c. Possible shortfalls

SECTION FIVE

SPECIAL PROVISIONS

5.01 SCOPE

All transcription services shall be in accordance with this RFP.

5.02 RESPONSIBILITY OF OFFERORS

Offeror is advised that if awarded a contract under this solicitation, Offeror shall furnish proof of compliance with the requirements of HRS Section 103D-310(c):

1. HRS Chapter 237, Tax Clearance;
2. HRS Chapter 383, Unemployment Insurance;
3. HRS Chapter 386, Workers' Compensation;
4. HRS Chapter 392, Temporary Disability Insurance; and
5. HRS Chapter 393, Prepaid Health Care;

Offeror may go to Hawaii Compliance Express at <https://vendors.ehawaii.gov/hce/splash/welcome.html> to expedite the proof of compliance process.

5.03 OFFEROR QUALIFICATIONS

Offeror shall meet all qualifications required by this RFP.

5.04 TERM OF CONTRACT

The successful Offeror shall be required to enter into a formal written contract to commence work on this project.

The initial term of the contract shall be for a period starting on the official commencement date of the Notice to Proceed to June 30, 2021. The contract may be extended, from time to time, for an aggregate of up to 48 months, if mutually agreed upon in writing prior to contract expiration. OCS or the Contractor may terminate the extended contract period at any time upon six weeks' prior written notice.

5.05 CONTRACT ADMINISTRATOR

For the purposes of this procurement, Supervising Committee Secretary Tammy Frias, (808) 270-7838, county.council@mauicounty.us, or an authorized representative, is designated the Contract Administrator.

5.06 OVERVIEW OF THE RFP PROCESS

- a. The RFP is issued pursuant to HAR Chapter 3-122, Subchapter 6, implementing HRS Section 103D-303.

- b. The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by an addendum.
- c. Proposals shall not be opened publicly but shall be opened in the presence of two or more OCS personnel, including the Procurement Officer. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.

All proposals and other material submitted by Offerors become the property of the OCS and may be returned only at OCS's option.

- d. Proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.
- e. Proposals may be accepted on evaluation without discussion. However, if discussions are deemed necessary, then prior to entering into discussions, a priority list of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.
- f. If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate the clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.
- g. Following any discussions, priority-listed Offerors will be invited to submit their BAFO, if required.
- h. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria in Section Four, the Procurement Officer will make its recommendation. The Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to OCS.
- i. The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once the award notice is posted, all proposals, successful and unsuccessful, become available for public inspection.
- j. The Procurement Officer reserves the right to determine what is in the best interest of OCS for purposes of reviewing and evaluating proposals submitted in response to the RFP.
- k. The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of OCS.

5.07 CONFIDENTIAL INFORMATION

If an Offeror believes any portion of a proposal should be withheld as confidential, the Offeror should provide written justification, submitted with the proposal, to support the confidentiality claim.

5.08 REQUIRED REVIEW

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter **must be made in writing and should be received by OCS prior to the Proposal Due Date.**

5.09 QUESTIONS PRIOR TO OPENING OF PROPOSALS

All questions must be submitted in writing and directed to the Procurement Officer or Contract Administrator. OCS will respond to written questions by the date indicated in Section One, 1.04 RFP Schedule and Significant Dates, as may be amended.

5.10 PROPOSAL AS PART OF THE CONTRACT

This RFP and all or part of the successful proposal may be incorporated into the contract.

5.11 CONTRACT MODIFICATIONS - UNANTICIPATED AMENDMENTS

During the course of the contract, the Contractor may be required to perform additional work that will be within the general scope of the initial contract. When additional work is required, the Contract Administrator will provide the Contractor a written description of the additional work and request the Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Changes to the contract may be modified only by written document (contract modification) signed by the Council Chair, or authorized personnel, and Contractor personnel authorized to sign contracts on behalf of the Contractor.

The Contractor will not commence additional work until a signed contract modification has been issued.

5.12 PROTEST

A protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the RFP shall be submitted in writing prior to the Proposal Due Date; and further provided that a protest of an award or proposed award shall be submitted within five working days after the posting of award of the contract.

The notice of award, if any, resulting from this RFP shall be posted on the SPO website: <http://spo.hawaii.gov/for-vendors/contract-awards/awards/>

Any protest pursuant to HRS Section 103D-701 and HAR Section 3-126-3 shall be submitted in writing to Office of Council Services, Attention: Director, 200 South High Street, Wailuku, Hawaii 96793.

5.13 GOVERNING LAW: COST OF LITIGATION

The validity of the contract and any of its terms or provisions, as well as the rights and duties of the parties to the contract, shall be governed by the laws of the State of Hawaii. Any action at law or equity to enforce or interpret the provisions of this procurement shall be brought in a State court of competent jurisdiction in Wailuku, Hawaii.

In case OCS shall, without any fault on its part, be made a party to any litigation commenced by or against the Contractor in connection with this procurement, the Contractor, shall pay all costs and expenses incurred by or imposed on OCS, including attorneys' fees.

5.14 SUBMISSION OF PROPOSAL

The submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

Before submitting a proposal, each Offeror must:

- (1) Thoroughly examine the RFP, including attachments and exhibits; and
- (2) Become familiar with Federal, State, and County laws and regulations that may in any manner affect cost, progress, or performance of the work.

Offers shall be received at the Office of Council Services, Attention: Director, 200 South High Street, Wailuku, Hawaii 96793, no later than the date and time stated in Section 1.04, Significant Dates, as may be amended. Timely receipt of offers shall be evidenced by the date and time registered by the OCS time stamp clock. Offers received after the deadline shall be returned unopened.

Proposals submitted by facsimile or e-mail will not be accepted.

5.15 PROPOSAL OPENING

Proposals shall not be opened publicly but shall be opened in the presence of two or more OCS personnel including the Procurement Officer. The register of proposals and Offeror's proposals shall be open to public inspection after posting of the award.

5.16 EVALUATION OF PROPOSALS

- A. The Procurement Officer, and evaluation committee of at least two qualified County employees selected by the Procurement Officer, shall evaluate proposals.

- B. Proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. Discussion may be conducted with priority listed Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award, but proposals may be accepted without such discussions. The objective of these discussions is to clarify issues regarding the Offeror's proposals before the BAFO, if necessary.

5.17 DISCUSSION WITH PRIORITY LISTED OFFERORS

The Procurement Officer or the evaluation committee may request to discuss the respective proposals with priority listed Offerors to ensure thorough, mutual understanding. OCS in its sole discretion shall schedule the time and location for these discussions.

5.18 CANCELLATION OF RFP AND PROPOSAL REJECTION

OCS reserves the right to cancel this RFP and to reject any and all proposals, in whole or in part, when it is determined to be in the best interest of the County, pursuant to HAR Section 3-122-95 through 3-122-97.

OCS shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is rejected.

5.19 ADDITIONAL TERMS AND CONDITIONS

OCS reserves the right to add terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluation.

5.20 CONTRACT EXECUTION

Successful Offeror receiving award shall enter into a formal written contract with OCS. No performance or payment bond is required for this contract.

No work is to be undertaken by the Contractor prior to the commencement date. OCS is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the contract for the additional extension period. The Contractor or OCS may terminate the extended contract at any time without cause upon six weeks' prior written notice.

5.21 PAYMENT

Incremental payments shall be made to the awarded Contractor on a monthly or other agreed-upon basis, upon receipt of proper invoices.

HRS Section 103-10 provides that OCS shall have 30 calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, OCS will reject any offer submitted with a condition requiring payment within a shorter period.

Further, OCS will reject any offer submitted with a condition requiring interest payments greater than that allowed by HRS Section 103-10.

5.22 AWARD OF CONTRACT

Method of Award. The award will be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to OCS based on the evaluation criteria.

Responsibility of Highest-Ranked Offeror. By law, the highest-ranked Offeror shall produce required documents to the Procurement Officer, with the proposal or within the time requested.

Final Payment Requirements. For final payment on the contract, Contractor is required to submit proof of compliance with the requirements of HRS Section 103D-310(c):

1. HRS Chapter 237, Tax Clearance;
2. HRS Chapter 383, Unemployment Insurance;
3. HRS Chapter 386, Workers' Compensation;
4. HRS Chapter 392, Temporary Disability Insurance; and
5. HRS Chapter 393, Prepaid Health Care;

Contractor may go to Hawaii Compliance Express at <https://vendors.ehawaii.gov/hce/splash/welcome.html>.

5.23 SUBCONTRACTING

No work or services shall be subcontracted or assigned without the prior written approval of OCS. No subcontract shall under any circumstances relieve the Contractor of obligations and liability under this procurement with OCS. All persons engaged in performing the work covered by the contract shall be considered employees of the Contractor.

5.24 CONTRACT INVALIDATION

If any provision of this procurement is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

5.25 NON-DISCRIMINATION

The Contractor shall comply with all applicable Federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Contractor or in participation in the benefits of any program or activity funded, in whole or in part, by OCS.

5.26 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 of the contract.

5.27 WAIVER

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

5.28 SEVERABILITY

In the event that any provision of the 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 the contract.

5.29 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

It has been determined that funds for this procurement have been appropriated by a legislative body.

Therefore, Offeror, if awarded a contract in response to this solicitation, agrees to comply with HRS Section 11-355, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the Contractor is paid with funds appropriated by a legislative body.

5.30 ADDITIONS, AMENDMENTS AND, CLARIFICATIONS

A. **Approvals.** Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General or the Department of the Corporation Counsel as to form and legality, and is subject to all further approvals, including the approval of the Council Chair, required by statute, regulation, rule, order, or other directive.

B. **Records Retention.** The Contractor and any subcontractors shall maintain the books and records that relate to the contract and any cost or pricing data for three years from the date of final payment under the contract.

C. **Competency of Offeror.** An Offeror must be capable of performing the work described in this RFP. OCS may require an Offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status, or any other factors relating to the ability of the Offeror to furnish satisfactorily the services being solicited by OCS. Any inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signs the offer. Any Offeror who refuses to answer inquiries will be considered non-responsive.

D. **Only One Offer.** An Offeror may submit only one offer in response to this RFP.

SECTION SIX

ATTACHMENTS AND EXHIBITS

- Attachment 1: OFFER FORM OF-1
- Attachment 2: OFFER FORM OF-2
- Exhibit A: COUNTY OF MAUI GENERAL CONDITIONS FOR PURCHASE OF GOODS AND SERVICES
- Exhibit B: GUIDELINES FOR MINUTES PREPARED BY TRANSCRIPTION SERVICE

**OFFER FORM
OF-1**

TRANSCRIPTION SERVICES

Procurement Officer
Office of Council Services
County of Maui
Wailuku, Hawaii 96793

Dear Procurement Officer:

The undersigned has carefully read and understands the terms and conditions specified in the Request for Proposals and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) she or he is declaring her or his offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) she or he is certifying that the prices submitted were independently arrived at without collusion.

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ *Corporation ☐ Joint Venture
☐ Other _____
*State of incorporation: _____

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

Payment address (if other than street address below): _____
City, State, Zip Code: _____

Business address (street address): _____
City, State, Zip Code: _____

Respectfully submitted:

Date: _____ (x) _____
Authorized (Original) Signature

Telephone No.: _____

Name and Title (Please Type or Print)

E-mail Address: _____ ** _____
Exact Legal Name of Company (Offeror)

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

**OFFER FORM
OF-2**

Provide prices and explanations here:

☐ Check here if supplemental papers are attached.

Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.

Offeror _____
Authorized Representative

Name of Company

**COUNTY OF MAUI
GENERAL CONDITIONS
FOR PURCHASE OF GOODS AND SERVICES**

1. COORDINATION OF SERVICES BY THE COUNTY. The Officer-in-Charge shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Contract. The CONTRACTOR shall maintain communications with the Officer-in-Charge at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency 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 COUNTY department or division which is authorized to enter into contracts for the procurement of goods and services.

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 agreement; however, the COUNTY shall have a general right to inspect work in progress to determine whether, in the COUNTY'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 COUNTY 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 COUNTY.

b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Contract, agents or employees of the COUNTY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the COUNTY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to the COUNTY 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. Unless provided otherwise by agreement between the parties, 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, Hawaii Revised Statutes ("HRS"), and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to the COUNTY 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 Section 103-53, 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 sections 3-122-112, Hawaii Administrative rules, ("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 employees 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; CHANGE OF NAME.

a. No assignment without consent. 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 (1) the CONTRACTOR obtains the prior written consent of the COUNTY and (2) the CONTRACTOR'S assignee or subcontractor submits to the COUNTY a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law 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 COUNTY.

b. Recognition of a successor in interest. When in the best interests of the COUNTY, a successor in interest may be recognized in an assignment agreement in which the COUNTY, 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 COUNTY; and
- 3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

c. Change of name. When the CONTRACTOR asks to change the name under which it holds this Contract with the COUNTY, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said 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 or conditions of this Contract are thereby changed.

d. Reports. All assignment contracts and amendments to this Contract effecting changes of CONTRACTOR's name or novations hereunder shall be reported to the chief procurement officer as defined in section 103D-203(b), HRS, within 30 days of the date that the assignment contract or amendment becomes effective.

e. Actions affecting more than one purchasing agency. Notwithstanding the provisions of Subparagraphs b. through d. herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the COUNTY, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the County Department of Finance

7. INDEMNIFICATION AND DEFENSE. Except as provided for in Section 103D-713, HRS, the CONTRACTOR shall defend, indemnify and hold harmless the COUNTY, the contracting department and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefor, arising out of or in connection with any 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 for any reason.

8. COST OF LITIGATION. In case the COUNTY 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 any cost and expense incurred by or imposed on the COUNTY, 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 COUNTY the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the COUNTY 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 Subparagraph 13.d. (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay. This Paragraph is of no force and effect unless the amount of liquidated damages is specified in the Contract.

10. COUNTY'S RIGHT OF OFFSET. The COUNTY may offset against any monies or other obligations the COUNTY owes to the CONTRACTOR under this Contract, any amounts owed to the COUNTY by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the COUNTY by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The COUNTY will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this Paragraph, amounts owned to the COUNTY 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 COUNTY, 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 COUNTY under such payment or other settlement plan.

11. DISPUTES. Disputes shall be resolved in accordance with Section 103D-703, HRS and Chapter 3-126, HAR.

12. SUSPENSION OF AGREEMENT. The COUNTY 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 head of the purchasing agency 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 of time 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. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and 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 head of the purchasing agency 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 or performance schedule or compensation, 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 adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency 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 provisions 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, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the head of the purchasing agency 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 head of the purchasing agency, the head of the purchasing agency 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 failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate by the head of the purchasing agency. 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 and services.

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

c. Compensation. Payment for completed goods and services delivered and accepted by the COUNTY 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 head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set the amount subject to the CONTRACTOR's rights under chapter 3-126, HAR. The COUNTY may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect the COUNTY against loss because of outstanding liens or claims of former lien holders and to reimburse the COUNTY for the excess costs incurred by the COUNTY in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, if the CONTRACTOR has notified the head of the purchasing agency within fifteen (15) days after the cause of the delay and the failure arises out of causes including acts of God; acts of the 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 obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of the failure, and, if he or she 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 or the time of performance shall be revised accordingly, subject to the rights of the COUNTY under the clause entitled, in fixed-price contracts, "Termination for Convenience," and in cost-reimbursement contracts, "Termination." 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 d., "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 BY THE COUNTY.

a. Termination for convenience. The head of the purchasing agency may, when the interests of the COUNTY so require, terminate this Contract in whole or in part, for the convenience of the COUNTY. The head of the purchasing agency shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when such 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 shall 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 County's approval. The head of the purchasing agency may direct the CONTRACTOR to assign the

CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the COUNTY. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as are necessary to do so.

c. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to the COUNTY in the manner and to the extent directed by the head of the purchasing agency:

1) Any completed goods or work product or both; 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 head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use CONTRACTOR's best efforts to sell such goods and manufacturing materials. Use of this Paragraph in no way implies that the COUNTY 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 cost or pricing data to the extent required by subchapter 15, chapter 3-122 of the HAR, bearing on the claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the CONTRACTOR, if at all, an amount set in accordance with d.(3) of this Paragraph.

2) The head of the purchasing agency and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted to the extent required by subchapter 15, chapter 3-122 of the HAR, and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the COUNTY, the proceeds of any sales of goods and manufacturing materials under Subparagraph c. of this Paragraph, and the Contract price of the performance not terminated.

3) Absent complete agreement under Subparagraph d.2) above, the head of the purchasing agency shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph d.2) shall not duplicate payments under this Subparagraph for the following:

(A) Contract prices for goods or services or both accepted under the Contract;
(B) Costs incurred in preparing to perform and performing the terminated portion of the work or performance plus a five per cent markup on actual direct costs on the portion of the work or performance, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services or both; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Subject to the prior approval of the head of the purchasing agency, costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph b. Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with Subparagraph d.3)(B).

(D) The total sum to be paid the CONTRACTOR under this Subparagraph shall not exceed the total Contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph c.3) and the Contract price of performance not terminated.

4) Costs claimed, agreed to, or established under Subparagraphs d.2) and d.3) above shall be in accordance with Chapter 3-123, HAR.

15. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS.

a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such person) 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 proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:

1) The CONTRACTOR shall have given written notice to the head of the purchasing agency:

(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 head of the purchasing agency in writing.

2) 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 head of the purchasing agency or his or her designee, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable in the discretion of the head of the purchasing agency or his or her designee.

3) The notice required by Subparagraph a.1) of this Paragraph must describe 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) The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the COUNTY, of the claimed additional costs or an extension of time in connection with such changes.

b. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding any County 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. Any adjustment in the price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of the Contract and these General Conditions.

16. COST 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 airfare, 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 head of the purchasing agency is obtained, reimbursement for subsistence allowable allowance (i.e., hotel and meals) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel for County officers and employees in the executive branch who are excluded from collective bargaining coverage. No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by the COUNTY, other than those items listed in Subparagraphs a. and b. of this Paragraph. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the COUNTY Officer-in-Charge.

d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Contract are not entitled to per diem or transportation expense reimbursement unless expressly specified in the Contract.

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 all payments shall be made in accordance with and subject to Article 9 of the County of Maui Charter.

c. Payment only for work under contract. The COUNTY is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Contract and any amendments or change orders thereto. CONTRACTOR must follow Paragraph 19, Contract Modifications, or Paragraph 20, Change Orders, and must have proper authorization before performing work outside the original Contract.

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 OR STATE FUNDS. If this Contract is payable in whole or in part from federal or state of Hawaii ("State") funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal or State funds, the CONTRACTOR shall be paid only from such funds received from the

federal or State government, and shall not be paid from any other funds. Failure of the County to receive anticipated federal or

State funds shall not be considered a breach by the County or an excuse for nonperformance by the CONTRACTOR.

19. CONTRACT MODIFICATIONS.

a. Modification in writing; no verbal modification. At any time, and without notice to any surety, the head of the purchasing agency, subject to mutual agreement of the parties to the Contract in writing and all appropriate adjustments, may make modifications within the general scope of this Contract to include any one or more of the following:

- 1) Drawings, designs, or specifications, for the goods to be furnished or services to be performed;
- 2) Method of shipment or packing;
- 3) Place of delivery;
- 4) Description of services to be performed;
- 5) Time of performance (I. e., hours of the day, days of the week, etc.);
- 6) Place of performance of the services; or
- 7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

b. No verbal modification. No verbal modification, alteration, amendment, change or extension of any term, provision or condition of this Contract shall be permitted or acknowledged.

c. Adjustment 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 price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

e. Other claims not barred. In the absence of a written modification to the Contract, 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.

f. Professional Services Contract. If this is a professional services contract awarded pursuant to Section 103D-304, HRS, any modification, alteration, amendment, change or extension of any term, provision or extension of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial Contract price must receive the prior approval of the County Director of Finance.

g. Tax clearance. The COUNTY may, at its discretion, require the CONTRACTOR to submit to the COUNTY, prior to the COUNTY's approval of any modification, alteration, amendment, change or extension of any term, provision or condition of the Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid.

h. Sole source agreements. Amendments to sole source agreements that would change the original scope of the agreement, or increase the original contract price by ten percent or more, may only be made with the approval of the Chief Procurement Officer. Annual renewal of a sole source agreement for services shall not be submitted as an amendment.

20. CHANGE ORDERS. A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the "changes clause" described below authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.

a. Changes Clause Generally. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order of the CONTRACTOR:

- 1) Changes in the work within the scope of the Contract; and
- 2) Changes in the time of performance of the Contract that do not alter the scope of the contract

work.

b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and the 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 provision of this Contract. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with Subparagraph a.5) of Paragraph 21 on Price Adjustment. Failure of the parties to agree to an adjustment in time shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the head of the purchasing agency, within fourteen days after the changed work commences, makes the provisional adjustments in time as the head of the purchasing agency deems reasonable. The right of the CONTRACTOR to dispute the

contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the Contract.

c. Time period for claim. Except as may be provided otherwise by section 103D-501(b), HRS, the CONTRACTOR must file a written claim disputing the contract price or time provided in a change order within ten days after receipt of a written change order, unless such period for filing is extended by the head of the purchasing agency in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

1) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

2) Other claims not barred. In the absence of such a change order, nothing in this clause 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;

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

3) By the costs attributable to the events or situations covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

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

5) In the absence of agreement between the parties, the adjustment shall be made pursuant to 103D-501(b)(5), HRS.

b. Submission of cost or pricing data. The CONTRACTOR shall be required to submit cost or pricing data for any price adjustment subject to the provisions of subchapter 15, chapter 3-122, HAR. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in Subparagraph (a)(1) through (a)(4) of this Paragraph shall be issued within ten days after agreement on the method of adjustment.

22. VARIATIONS IN QUANTITY FOR ANY DEFINITE QUANTITY CONTRACT. If this is a definite quantity goods or services contract, upon the agreement of the COUNTY and the CONTRACTOR, the quantity of goods or services, or both, specified in this Contract, may be increased by a maximum of ten per cent (10%), provided (1) the unit prices will remain the same except for any price adjustments otherwise applicable; and (2) the head of the purchasing agency 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 agreement.

23. CHANGES IN COST-REIMBURSEMENT CONTRACT. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

a. The head of the purchasing agency may at any time by written order, and without notice to the sureties, in any, make changes within the general scope of the Contract in any one or more of the following:

1) Description of performance;

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 COUNTY 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 head of the purchasing agency shall make an equitable adjustment in the 1) estimated cost, deliver 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 30 days from the day of receipt of the written order. However, if the head of the purchasing agency decides that the facts justify it, the head of the purchasing agency 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 the provision on Dispute herein. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.

e. Notwithstanding the terms and conditions of Subparagraphs a. and b. of this Paragraph, 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 the contract is incrementally funded, the new amount allotted to the contract.

24. PROMPT PAYMENT OF SUBCONTRACTORS.

a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.

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

c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in Subparagraph d. of this Paragraph, and:

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

2) The following has occurred:

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

(B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in Subparagraph b. of this Paragraph and section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated Subparagraph b. three or more times within two years of the first violation, the Contractor shall be referred by the procurement officer to the contractors license board for appropriate action, including action under section 444-17(14), HRS.

d. A properly documented final payment request from a subcontractor, as required by Subparagraph c., shall include:

1) Substantiation of the amounts requested;

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

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

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

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

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

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

e. This section shall not be construed to impair the right of a CONTRACTOR or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under Subparagraph c. of this Paragraph; provided that any such payments withheld shall be withheld by the procurement officer.

25. ACCEPTANCE OF GOODS AND SERVICES. The COUNTY shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection.

No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Contract or impair any rights or remedies of the COUNTY.

26. OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY. Contractor shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. Contractor shall provide advanced notification in writing to the Officer-in-Charge of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. Contractor shall notify the COUNTY of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Contract and shall work with the COUNTY to determine the need to stockpile any parts for the likely life of the product and offer those parts to the COUNTY prior to the actual discontinuance. Contractor shall extend opportunities to the COUNTY to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.

27. 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 COUNTY.

b. All information, data, or other material provided by the CONTRACTOR to the COUNTY is subject to the Uniform Information Practices Act, chapter 92F, HRS.

28. PUBLICITY. The CONTRACTOR shall not refer to the COUNTY or any office, agency, or Officer thereof, or any COUNTY employee, including the head of the purchasing agency, the County procurement officers, the COUNTY council members, or members or directors of any County Board, 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 without the explicit written consent of the COUNTY. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the head of the purchasing agency.

29. OWNERSHIP RIGHTS AND COPYRIGHT. The COUNTY 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 for hire." All such materials shall be delivered to the COUNTY upon expiration or termination of this Contract. The COUNTY, 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.

30. INSURANCE. During the term of this Contract, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to the COUNTY under this Contract. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by the COUNTY, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,000 or less, and THREE MILLION DOLLARS (\$3,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,001 or more, or such greater amount as may be required from time to time by the COUNTY. CONTRACTOR shall provide COUNTY not less than thirty (30) days notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from the COUNTY. The COUNTY shall be listed as an additional insured on all policies, with the exception of professional liability. Prior to the commencement of this Contract, CONTRACTOR shall provide the COUNTY with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for CONTRACTOR shall provide the COUNTY with certificates of insurance evidencing the foregoing coverage and provisions. The COUNTY reserves the right to request and receive a certified copy of the policies. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Contract and the COUNTY shall thereafter have the options of pursuing remedies for such breach and/or immediate termination of this Contract.

31. LIENS AND WARRANTIES.

a. Liens. All products provided under this Contract shall be free of all liens and encumbrances.

b. Warranties for products and services. In the event this Contract is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to the COUNTY. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Contract, schedules, publications of CONTRACTOR and/or any order(s) and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of the COUNTY. The Warranty period shall commence after Acceptance, as defined in this Contract. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Contract but in any event such warranty period shall not be less than one (1) year.

32. AUDIT OF BOOKS AND RECORDS OF THE CONTRACTOR. The COUNTY 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 county contract, including subcontracts, other than a firm fixed-price contract.

33. COST OR PRICING DATA.

a. Cost or pricing data must be submitted to the head of the purchasing agency and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the head of the purchasing agency.

b. 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 County 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.

34. AUDIT OF COST OR PRICING DATA. When cost or pricing principles are applicable, the County may require an audit of cost or pricing data.

35. RECORDS RETENTION.

a. 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 COUNTY.

b. 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 COUNTY, and any cost or pricing data, for at least three 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 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 County at the request of the County.

36. ANTITRUST CLAIMS. The COUNTY 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 the COUNTY 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 COUNTY under an escalation clause.

37. PATENTED ARTICLES. The CONTRACTOR shall defend, indemnify, and hold harmless the COUNTY, 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 COUNTY any such infringement or improper or unauthorized use, including, without limitation a. furnishing at no cost to the COUNTY a substitute article, process, or appliance acceptable to the COUNTY; 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.

38. 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 COUNTY 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 COUNTY determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

39. 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 procedure 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 COUNTY 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 COUNTY.

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 COUNTY to reduce the risk of unauthorized access to personal information.

4) CONTRACTOR shall report to the COUNTY 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 COUNTY, or personal information created or received by CONTRACTOR on behalf of the COUNTY.

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 COUNTY learns of a material breach by CONTRACTOR of this Paragraph by CONTRACTOR, the COUNTY 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.

40. 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 Wailuku, Maui, Hawaii.

41. 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. This specifically includes, without limitation, Sections 103-55 and 103-55.5, HRS, dealing with wages, hours and working conditions of employees of contractors providing services or construction.

42. CONFLICT BETWEEN GENERAL CONDITIONS AND PROCUREMENT RULES. In the event of a conflict between the General Conditions and the procurement rules in the HAR, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

43. CAMPAIGN CONTRIBUTIONS. CONTRACTOR acknowledges that it is unlawful under Section 11-355, HRS, unless specifically permitted under that law, for CONTRACTOR at any time between the execution of this Contract through the completion of the Contract to: (a) directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any

candidate or to any person for any political purpose or use; or (b) knowingly solicit any contribution from any person for any purpose during any period.

44. DRAFTING. No provision of this Contract shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Contract.

45. CAPTIONS. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

46. COUNTERPARTS. This Contract may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile or electronic executions or a combination thereof shall be construed together and shall constitute one and the same Contract.

47. SEVERABILITY. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

48. WAIVER. The failure of the COUNTY 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 COUNTY's right to enforce the same in accordance with this Contract. The fact that the COUNTY specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the COUNTY's rights or the CONTRACTOR's obligations under the law.

49. ENTIRE AGREEMENT. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the COUNTY 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 COUNTY and the CONTRACTOR other than as set forth or as referred to herein.

[END OF GENERAL CONDITIONS OF PURCHASE OF GOODS AND SERVICES]

**GUIDELINES FOR MINUTES PREPARED
BY TRANSCRIPTION SERVICE**
(as of January 21, 2020, subject to revision)

1) INTRODUCTION:

- a) The Office of Council Services ("OCS") has arranged for a transcription service to produce meeting minutes (as nearly verbatim as is practicable and useful to the vendor) within the 40-day deadline imposed by State law.
- b) Transcription service certifications reduce the need for the respective Committee Secretary to review externally prepared transcripts. Certifications of the accuracy of the minutes must be signed by the transcriber certifying the document represents, to the best of their ability, a true and correct transcript of the proceedings. The Contractor may use transcribers who are subcontractors or employees to assist in the production of transcripts, but must undertake the procedures necessary to certify that the transcript is accurate in accordance with OCS standards.
- c) The Contractor is responsible for assigning the transcription to specific personnel.

2) DEFINITIONS:

- a) "Clear error" means an inaccurate transcription that modifies the meaning of the statement to a layperson, or an omission of important information that the Committee Secretary provided in the minutes cover sheet; such as, vote tallies, motions, actions, recess and adjourn times, attendance, etc.
- b) "Contractor" means the person who is a party to the agreement with OCS and who is primarily responsible to fulfill the contract.
- c) "Committee Secretary" means the OCS Committee Secretary who is assigned the responsibility for the preparation of the minutes shell and compiling information on how to access the reference materials and digital recording for a particular meeting.
- d) "Coordinator" means the OCS employee responsible for coordinating this program. Initially, the Supervising Committee Secretary will serve as the Coordinator.
- e) "Draft" means all preliminary versions of a transcript that the transcriber prepares and emails to the Committee Secretary for review.
- f) "Minutes shell" means a Word document that the Committee Secretary creates and emails to the Contractor for the transcriber's use in preparing the transcript.

- g) “Reference materials ” means an email containing the minutes shell; meeting status agenda; and instructions on how to access the following information from the Council’s website (www.mauicounty.us): (1) committee documents (e.g., county communications, proposed legislation, written testimonies, meeting handouts, etc.); and (2) ¹digital recordings (video recordings) of committee meetings.
- h) “Transcriber” means the Contractor, or the Contractor’s subcontractor or employee, who prepares the minutes.
- i) “Transcript” means a final version of the meeting minutes.

3) GENERAL POLICIES:

- a) The Coordinator is responsible for maintaining a log of each set of minutes given to the Contractor. The Coordinator will include dates for each of the following: email from Coordinator confirming receipt of new assignment; transcript deadline; submittal of each draft of the transcript; and receipt of final transcript.

4) BACKGROUND INFORMATION:

- a) It is important to use public resources efficiently, which requires OCS to focus staff time on core functions, and outsource when vendors can provide competitive services. Providing for the efficient management of meetings is a core function. The preparation of specific written minutes is a core function. The preparation of near-verbatim minutes is not a core function, but is a preference of Councilmembers.
- b) Multiple sources of services are sought when suitable services are not commonly available, to ensure consistency (and, therefore, reliability and credibility). Satisfactory transcription services to government agencies are not commonly available on a pre-packaged basis. Service quality varies considerably.
- c) The State’s sunshine law specifically allows summary minutes, but describes those minutes in a manner that require many judgment calls, which increases time and costs.
- d) In outsourcing services, OCS has a responsibility to efficiently provide reasonable quality controls. Experience has shown that it is too costly to spend the time to require complete accuracy. Transcribers, court reporters, and even committee secretaries, are inconsistent in the degree to which their work is absolutely accurate.

¹ The Contractor will be responsible to convert the digital recording (video recording) using the Any Video Converter (or other software program) to save it to a format that is compatible with a digital transcriber. The Contractor will provide the recording to the Transcriber. However, if there is no digital recording (video recording) of the meeting, the audio recording will be provided to the Contractor. *Note: Committee Secretaries upload digital recordings (video recordings) to the Council website immediately after committee meetings.*

- e) Timeliness standards are designed to meet State sunshine law deadlines for having a reasonably informative record of the meeting within 40 days; in practice, a reasonably complete first draft must be in OCS possession so it may be issued upon demand.
- f) Content standards are established to meet minimum sunshine law standards and the preference for near-verbatim description of meeting proceedings. Drafting standards are as narrow as feasible, to maximize the number of vendors who are willing and able to compete for the work, and to minimize the time (and cost) and delays required for quality control, and to avoid unnecessary disputes with vendors.
- g) Staff time spent perfecting outsourced work diverts time from other functions that can only be performed by staff. OCS is responsible for providing reasonable quality control, but is not justified in spending more time and money than necessary.
- h) OCS is responsible for providing services, through contractors when appropriate; however, contractors are responsible for the quality of their services. It is in each contractor's interest (and the interest of their employees and subcontractors) to attract, motivate, and retain capable transcribers. Turnover is expensive for the contractor and for OCS, because of the need for initial training and reviews. Unresolved performance shortfalls will require OCS to re-procure services with different incentives and penalties.
- i) To date, quality control efforts have involved monitoring new transcribers until they're found to be qualified or unqualified and, thereafter, by spot-checking and periodic proofreading at random.

5) TYPICAL PROCEDURES:

- a) Each Committee Secretary will create a minutes shell (Word format) and email the minutes shell and instructions on how to access the reference materials and digital recording to the Contractor. The Contractor will forward the Committee Secretary's email and instructions to the transcriber assigned to work on the particular transcript. The transcriber will use the Word file as the basis for the transcript to minimize errors that can occur in retyping names and information provided in the minutes shell, since it is prepared with the proper margins, headers/footers, type styles, font sizes, formatting, etc. The minutes shell will include the following:
 - Committee name
 - Committee meeting date
 - Location of meeting
 - Convene/Adjourn times
 - Members Present/Excused
 - Staff Present
 - Administrative Personnel Present
 - Testifiers and Others Present
 - Press

- Recess/Reconvene times
- Testimony/Presentation notations
- Items discussed
- Votes or Actions taken

Standard Transcript Format — a standard format for these documents include type font, margins, line spacing, and vote tallies. The proposed specifications are:

- Top/bottom — 0.5 inches
- Left/right margins — 0.75 inches
- Header (Committee Name and Date) - 0.5 inches
- Footer - 0.5 inches
- Font — Bookman Old Style — 11 point
- Line Spacing — single space

After the minutes shell is prepared, the Committee Secretary will email the minutes shell and instructions to the Contractor. This will be a cue for the Contractor that this is a new transcript assignment. When the Contractor receives an email from the Committee Secretary, the Contractor will reply to the email, which will serve as the *Acknowledgment of Receipt*. If the Committee Secretary's email is submitted prior to 12 noon, the meeting date counts as day one. If the email is submitted after 12 noon, then the next day counts as day one. After the Contractor emails a confirmation receipt of the new transcript assignment, the Coordinator will input the receipt date on the minutes log.

6) TRANSCRIBING PROCEDURES:

- a) The Contractor or transcriber will be given 22 calendar days (excluding County holidays) to prepare and deliver a completed first draft of the transcript. The Contractor will email the Coordinator and Committee Secretary the name of the transcriber assigned to work on the particular transcript.

7) REVIEW PROCEDURES:

- a) Upon completion of the first draft, the Contractor or transcriber will email the electronic version of the draft to the Committee Secretary with a cc to the Coordinator. The Committee Secretary will then print out the following three pages (attendance page, last page showing adjourn time, and certification page) of the first draft, and the status agenda; time-stamp the paper copy; rubberstamp it; and place it in the OCS internal-review binder for three days to allow Councilmembers an opportunity to review the transcript.

8) ERRORS & REDRAFT PROCEDURES:

- a) Revisions made by the Committee Secretary will be noted on the draft document and emailed back to the transcriber with a cc to the Contractor and Coordinator. If no changes are suggested, the Committee Secretary will inform the transcriber and Contractor by email. The transcriber and Contractor are responsible for the transcript, and are required to decide issues related to content. Since the vote tallies enable compliance with Section 92-9, Hawaii Revised Statutes, the Committee Secretary will include all vote tallies in the minutes shell provided to the transcriber. Therefore, the transcriber and Contractor are urged to discuss any discrepancies with the Committee Secretary and Coordinator.
- b) The transcriber will then email the final transcript in Word format to the Committee Secretary and Coordinator. The transcriber or Contractor will deliver a paper copy of the final transcript, including the signed certification page, to OCS. The Coordinator will log the date that the final transcript is received via email and give the paper copy to the Committee Secretary, who will obtain the Committee Chair's signature, scan and upload to SharePoint, and upload to the website.
- c) Segments of Committee meetings held in closed executive sessions result in separate transcripts for each executive session meeting. The executive session meeting transcripts are internally prepared by OCS due to confidentiality.
- d) For quality control purposes, the Coordinator will require a Committee Secretary to closely review at least the first three transcripts prepared by a given transcriber and upon qualifying will perform spot reviews infrequently, and at random. The Committee Secretary will check vote tallies for all transcripts. The Committee Secretary is given five to seven business days to review the transcript. The Contractor is responsible for the performance of services under the contract, but failure by a transcriber to meet quality or timeliness standards may cause OCS to refuse to accept or pay for further work by that transcriber.

9) PROOFREADING PROCEDURES:

a) Background:

- i) This transcription procedure cannot be justified if a Committee Secretary must proofread draft minutes transcripts ("drafts") on a continuing basis. Proofreading is intended to ensure the quality and usefulness of the transcripts.

b) Review Procedures:

- i) Upon receipt of the first draft, the Committee Secretary will begin doing the "complete proofreading" process or the "random spot-check review," checking for clear errors.
- ii) If the Committee Secretary makes suggested revisions to a draft, the Supervisor's approval will be obtained before sending the revised draft back to the transcriber with a cc to the Supervisor and the Contractor.
- iii) If the Committee Secretary finds a clear error in the draft, she will stop the proofreading process immediately; have the Supervisor confirm the clear error; and request a revised draft.
- iv) Upon receipt of a revised draft, the Committee Secretary is required to do the "complete proofreading" process, checking for clear errors. This requirement applies to the revised draft and the next two consecutive transcripts, ensuring no clear errors were made.
- v) Once the Contractor submits three consecutive drafts of the transcriber that's gone through the "complete proofreading" process by the Committee Secretary with no clear errors, the transcriber will be considered "qualified." Thereafter, the Committee Secretary will do a "random spot-check review" of the minutes, and the Coordinator will only require a Committee Secretary to do the "complete proofreading" process of a draft from the transcriber once every three months, at random.
- vi) If a transcriber cannot become "qualified" within six submittals, OCS may determine that further time spent proofreading is not justified, and probably will recommend that no further transcription work be done by that transcriber. NOTE: If a transcriber's fourth submittal is found to have a clear error, it would no longer be possible for the transcriber to make three consecutive submittals.

- vii) If a clear error is found after a transcriber becomes “qualified,” a Committee Secretary will do the “complete proofreading” process for the revised draft and the next two transcripts that the transcriber submits. If a clear error is found in one of these drafts, OCS will probably have to determine that further time spent proofreading is not justified, and probably will recommend that no further transcription work be done by the transcriber.

10) TRANSCRIBING PROCEDURES:

- a) Required procedures, intended to minimize errors and proofreading time are as follows:
 - i) Transcribe minutes near verbatim (as is practicable and useful to the reader) while following traditional grammar and punctuation rules to the extent possible.
 - ii) Use Word List and reference materials provided by the Committee Secretary.
 - iii) Use AUTO TEXT or AUTO CORRECT.
 - iv) Proofread all drafts carefully, by listening to the original digital recording and by using the spellcheck function, before returning the minutes to the Coordinator.
 - v) Email or call the Committee Secretary, responsible for the meeting being transcribed, to resolve all questions and discrepancies (e.g., vote tallies, motions, and actions, etc.) that may arise before submitting the first draft, if possible.

OFFEROR:

Authorized Representative

Date: _____