

## NOTICE

PLEASE BE ADVISED THAT THIS ARCHIVED GENERAL PROVISIONS FOR CONSTRUCTION CONTRACTS (GPCC) REVISED JULY 1973 IS FOR THE PURPOSE OF REFERENCE FOR CONTRACTS SOLICITED PRIOR TO THE ADOPTION OF THE REVISED GPCC DATED SEPTEMBER 2015.

**GENERAL PROVISIONS  
OF  
CONSTRUCTION CONTRACTS  
OF THE  
COUNTY OF KAUAI**

**DEPARTMENT OF FINANCE  
COUNTY OF KAUAI  
STATE OF HAWAII**

**APPROVED: JANUARY 2, 1969 - MAY 12, 1972  
EFFECTIVE DATE: JANUARY 2, 1969  
REVISED: JULY 1973**

*Printed September, 1973*

GENERAL PROVISIONS  
OF  
CONSTRUCTION CONTRACTS  
OF THE  
COUNTY OF KAUAI

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DEPARTMENT OF FINANCE  
OF THE  
COUNTY OF KAUAI  
STATE OF HAWAII

RULES AND REGULATIONS OF DIRECTOR OF FINANCE  
GENERAL PROVISIONS OF CONSTRUCTION CONTRACTS  
OF THE COUNTY OF KAUAI

SECTION 1 — DEFINITIONS

When used in these provisions or elsewhere in the contract, the following terms, or pronouns used in place of them, shall have the meaning ascribed to them in this section, unless it is apparent from the context that a different meaning is intended;

1.1. COUNTY. The County of Kauai, State of Hawaii.

1.2. CONTRACT. The written agreement covering the construction of the project by the Contractor, including the furnishing of labor, materials and equipment in connection therewith. It shall include these provisions, the notice to the bidders, the bid, the award, the special provisions, the plans, the specifications, the bond, any addendum and any written order. It shall also include all amendments to the contract by supplemental agreement thereto in writing.

1.3. CONTRACTING OFFICER. The Contracting Officer shall mean:

A. The Director of Finance of the County or his representative.

1.4. CONTRACTOR. The person who has entered into the contract with the County.

1.5. OFFICER-IN-CHARGE. The Officer-in-Charge shall mean:

A. The Chief Engineer of the County or a representative of the Chief Engineer acting within the scope of the duties and authority assigned and delegated to him as such representative.

1.6. PERSON. The term "person" shall include an individual, a partnership, or a joint venture, or a corporation.

1.7. REFERENCE SPECIFICATIONS. When reference is made to known standard specifications, the most recently adopted and published edition of such specifications on the date of the notice to bidders is contemplated, unless otherwise specified.

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

AASHO American Association of State Highway Officials

ACI American Concrete Institute

AISC American Institute of Steel Construction

ASA American Standard Association

ASTM American Society for Testing and Materials

AWWA American Water Works Association

AWS American Welding Society

FS Federal Specifications

GO6 General Order No. 6 of the Public Utilities Commission, Rules for Overhead Electric Line Construction

GRJP General Rules for Joint Use of Poles

IES Illuminating Engineering Society

NEC National Electric Code

UL Underwriter's Laboratories, Inc.

WCLA West Coast Lumberman's Association

BPR Bureau of Public Roads, Department of Commerce

B. Standard Detail Drawings, Specifications and Special Provisions. When reference is made to standard detail drawings, specifications or special provisions, such referral shall be to the standard detail drawings, specifications or special provisions of the Department of Public Works.



## 1.8. MISCELLANEOUS DEFINITIONS

- A. CALENDAR DAY — Every day shown on the calendar. If no designation of calendar or working day is made, "Day" shall mean calendar day.
- B. CONTRACT TIME — The number of working days allowed for completion of the contract, including authorized time extensions. The contract time will be indicated in the proposal and contract.

In case a calendar date of completion is shown in the proposal in lieu of the number of working days, the contract shall be completed by that date.

- C. WORKING DAY — A calendar day, exclusive of Saturdays, Sundays and State recognized legal holidays, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed for at least 5 hours of the day with the normal working force engaged in performing the controlling item or items of work which would be in progress at the time.

## SECTION 2 — BIDDING INSTRUCTIONS

2.1. DEPOSIT FOR SPECIAL PROVISIONS, PLANS AND SPECIFICATIONS. Special provisions, plans and specifications of the contract may be obtained from the Department of Finance (Purchasing Division) of the County upon deposit of the amount specified in the notice to the bidders.

Unless otherwise stated in the notice to bidders, and deposit for the special provisions, plans and specifications will be refunded upon their return in good condition within 15 calendar days after the day on which bids have been opened.

Deposits shall be forfeited if the special provisions, plans and specifications are not returned within the specified time or in good condition.

The sample form of the bid is not to be detached from the special provisions.

2.2. QUALIFICATIONS OF BIDDERS. All bidders shall be contractors licensed in accordance with Chapter 444, Hawaii Revised Statutes, to perform the work under the contract.

Prospective bidders shall give written notice of their intention to bid to the Contracting Officer not less than six (6) calendar days before the day fixed for the opening of bids, as evidenced by the time-stamp of the Contracting Officer, and shall, upon request of the Contracting Officer, submit answers under oath to all questions contained in the "Standard Questionnaire and Financial Statement for Bidders" of the County not less than three (3) calendar days prior to the day fixed for the opening of the bids. No bid will be accepted from any bidder whose qualifications, experience, and/or equipment or financial condition is not considered satisfactory for performance of the contract.

1 { After the contract is entered into, all questionnaires except that of the Contractor will be returned to their makers. The questionnaire of the Contractor will be retained until the completion and final acceptance of the work performed under the contract.

No contract will be awarded to any person who has been suspended under and as provided in, the provisions of Chapter 104, Hawaii Revised Statutes, or to any firm in which such suspended person has an interest.

2.3. BID FORM. Bidding must be on a bid form provided for such purpose by the Department of Finance (Purchasing Division) of the County.

Bids shall be sealed and enclosed in envelopes showing the name of the project. Unless otherwise specified, bidders shall bid on all bid items shown on the bid form.

The bids shall be deposited at the Department of Finance (Purchasing Division) not later than the time specified for such bid opening. Bid received after the specified time for bid opening in the notice of bid shall be rejected.

1 { 2.4. BID FORM, INTERPRETATION OF. The bid form does not necessarily outline all of the work involved in the performance of the contract, but is merely a list of items upon which the computation of compensation is to be based. The bid form contains all items to be used in such computation, and the compensation computed therefrom shall be full compensation for the performance of the contract.

If it should appear to a prospective bidder that the performance of the work under the contract or any of the matters relative thereto, is not sufficiently described or explained in the bid form, or that any discrepancy exists between different parts thereof, or that the full intent of the form is not clear, then the bidder shall submit a written request for clarification to the Officer-in-Charge not later than ten (10) calendar days before the day fixed for the opening of bids, as evidenced by the time-stamp of the Officer-in-Charge. The bidder submitting the inquiry shall be responsible for its delivery.

1 { If additional information is deemed necessary, such information will be issued in an addendum by the Contracting Officer. The addendum will be mailed or delivered to all persons who have obtained the special provisions, plans, and specifications of the contract. No addendum will be issued during the five (5) calendar days immediately preceding the day fixed for the opening of bids. All addendum issued by the Contracting Officer shall be a part of the contract.

No oral interpretation, instruction or information concerning the contract given by any officer, employee, or agent of the County shall be binding on the County.

2.5. ESTIMATED QUANTITIES. The quantities of the items in the bid form are approximate only, and the County reserves the right to increase or decrease any of the quantities as the Contracting Officer shall deem necessary or advisable.

2.6. BID PRICES TO COVER ENTIRE CONTRACT. Bidders shall include in their bid prices the entire cost of the performance of the contract, and it is understood and agreed that there is included in each lump sum or unit price bid, the entire cost of all items incidental to the performance of the contract, covered by such lump sum or unit price bid. When a bidder is in doubt as to the proper bid item to which the anticipated cost of any incidental item is to be allocated, he shall include such cost in the lump sum or unit price bid for the bid items that he deems most appropriate.

2.7. BID DEPOSIT. All bids shall be accompanied by a deposit of legal tender or by a certificate of deposit or certified check on a bank doing business within the State of Hawaii, for or in a sum not less than five per cent of the total sum bid, payable to the County provided, that when the amount bid exceeds \$50,000, the bid deposit shall be for \$2,500, plus two per cent of the amount in excess of \$50,000. In case alternate bids are required or permitted, the amount of the bid deposit shall be based on the highest possible alternate bid, considering all alternates.

In lieu of a deposit of legal tender, a certificate of deposit or a certified check, a bid may be accompanied by a surety bond executed to the County by the bidder, as principal, and by a corporation organized and authorized under the laws of the United States or of the State of Hawaii, as act as a surety on bonds and doing business in the State of Hawaii under the provisions of the laws of the United States or of the State of Hawaii, as surety, in a penal sum of not less than the amount above provided for bid deposit, conditioned upon the bidder entering into the contract and furnishing the bond for faithful performance of the contract within ten (10) calendar days after the award of the contract to the bidder or within such further time as the Contracting Officer may allow.

All bid deposits which have not been forfeited as prescribed by subsection 3.6 shall be returned to the bidders who furnished them after either the contract is entered into and the bond for the faithful performance is furnished or the Contracting Officer decides to publish another call to bids.

2.8. PUBLIC OPENING OF BIDS. Bids will be opened and read publicly at the time and place indicated in the notice to bidders. Bidders or their authorized agents may be present.

2.9. EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS AND SITE OF PROJECT. Bidders shall examine the site of the project and the provisions of the contract, including but not limited to the bid form, special provisions, plans and specifications before submitting a bid. It is mutually agreed that submission of a bid shall be considered conclusive evidence that the bidder has made such examination; knows the surface and subsurface conditions of the site, the character, quality and quantities of labor, materials and equipment and other requirements necessary under the contract; and agrees to all and every item, covenant, condition and provision of the contract.

Where investigation of subsurface conditions has been made by the County in respect to foundation or other design, bidders may inspect the records of the County as to such investigation and examine any sample that may be available.

Investigations of subsurface conditions are made for the purpose of design, and the County assumes no responsibility whatsoever as to the sufficiency or accuracy of borings or of the log of test borings or reports or other investigations, or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those to be encountered during the performance of the contract, or any part thereof, or that the bidder may not encounter unforeseen subsurface conditions.

Making information concerning subsurface conditions available to bidders is not to be construed in any way as a waiver of the provisions of the first paragraph of this subsection and bidders must satisfy themselves through their own investigation as to conditions to be encountered.

Records of such investigations as may have been made by the County may be inspected at the office of the Officer-in-Charge.

2.10. TRADE NAMES AND ALTERNATIVES. When the plans or specifications specify one or more manufacturers' brand names or makes of materials, devices or equipment as indicating a quality style, appearance or performance, the bidder shall base his bid on either one of the specified brands or an alternate brand which has been found to be equal or better by the Officer-in-Charge. If bidder intends to base his bid on an alternate brand, he shall submit a written request to do so, to the Officer-in-Charge at the earliest date possible, but not later than ten (10) calendar days, as evidenced by the time-stamp of the Officer-in-Charge, before the day fixed for the opening of bids.

The burden of proof as to the comparative quality and suitability of alternative equipment, articles or materials shall be upon the bidder and he shall furnish, at his own expense, such information relating thereto as may be required by the Officer-in-Charge. The Officer-in-Charge shall be the sole judge as to the comparative quality and suitability of alternative equipment, articles or materials and his decisions shall be final.

Any bidder who bases his bid on an alternate brand which has been approved by the Officer-in-Charge, shall include in his bid the additional cost required for all modifications in the contract and the cost of all additional diagrams and drawings required to accommodate the alternate equipment. The modifications referred to include the changes in design that may be required for such work as, but not limited to, electrical and plumbing.

Substitution of equipment, articles or materials for either specified items or alternates found equal or better by the Officer-in-Charge after bid openings may not be made without the prior approval of the Officer-in-Charge.

2.11 PREFERENCE FOR HAWAII PRODUCTS. Pursuant to the provisions of Chapter 103, Hawaii Revised Statutes, all bidders shall complete the form, relating to preference for Hawaii Products attached to the bid form. Any claim for preference of a product on the Hawaii Products List established and administered by the Comptroller of the State of Hawaii shall be made on the form and the product and the class and cost thereof shall be stated thereon.

2.12. BIDS, WITHDRAWAL OF. A bid may be withdrawn at any time prior to the time fixed in the notice to bidders for the opening of bids by filing with the Contracting Officer a written request for withdrawal executed by the bidder or his duly authorized representative. The withdrawal of such bid shall not preclude the bidder from filing a new bid. After the time fixed for opening of bids, a bid may be withdrawn only if the County fails to award the contract within sixty (60) calendar days after the date on which bids were opened.

2.13. LISTING OF JOINT CONTRACTORS AND SUBCONTRACTORS. Pursuant to the provisions of Chapter 103, Hawaii Revised Statutes, all bidders shall state in their bids the name of each person that will be engaged as a joint contractor or subcontractor and the nature and scope of the work to be performed by each such joint contractor or subcontractor.

2.14. BIDS, DISQUALIFICATION OF. Bids which are conditional or not in compliance with the bidding instructions provided for in section 2, may be rejected.

No bid will be considered from any person submitting more than one bid under the same or different names, under his own name, or through his agents, or through joint ventures, partnerships or corporations in which he has more than 25% interest in each of them, or through any combination thereof.

If there is any evidence indicating that two or more bidders are in collusion to restrict competitive bidding, the bids of all such bidders shall be rejected and such evidence may be a cause for the disqualification of the participants in any future proposal involving any contract with the County.

It is also understood and agreed that if the product of the UNIT PRICE bid and the number of units do not equal the total amount stated by the undersigned in the Proposal for any item, it will be assumed that the error was made in computing the total amount. For the purpose of determining the lowest Bidder, the stated UNIT PRICE alone will be considered as representing the Bidder's intention and the total amount bid on such item shall be considered to be the amount arrived at by multiplying the UNIT PRICE by the number of units.

### SECTION 3 — AWARD AND EXECUTION OF CONTRACT

3.1. AWARD OF CONTRACT. Award of the contract will be to the lowest responsible bidder as provided by law. The award shall be made by written notice, and shall be as of the date therein specified.

The Contracting Officer reserves the right to reject any or all bids and to waive any defect as, in his judgment, may be in the best interest of the County.

3.2. CANCELLATION OF AWARD. The Contracting Officer reserves the right to cancel the award of the contract at any time before the document titled "Contract" is executed by the County.

3.3. FUNDS, AVAILABILITY OF. Award of the contract hereunder will be conditioned upon availability of funds for the contract.

3.4. ENTERING CONTRACT. Upon award of the contract to a bidder, such bidder shall enter into the contract by signing the contract and by furnishing the bond for faithful performance as prescribed in subsection 3.5 and the copies of the insurance policies required to be procured by the Contractor and subcontractor in subsection 4.4 within ten (10) calendar days after the date of the award or within such further time as the Contracting Officer may allow.

3.5. BOND FOR FAITHFUL PERFORMANCE. A bond for faithful performance in the form attached to the special provisions shall be furnished to the County in an amount not less than fifty (50) per cent of either the contract price or the cost of the contract as previously estimated by the County, whichever is higher. The bond shall continue for twelve (12) months after the final acceptance of the performance of work under the contract, and/or until all of the Contractor's obligations under the contract have been met. Such bond shall have surety thereon or may be executed by the Contractor alone, as prescribed by law, Chapter 103, Hawaii Revised Statutes.

Surety shall be subject to the approval of the Contracting Officer and shall be required to justify, as prescribed by law, provided that the Contracting Officer in his discretion may require such surety to justify in the prescribed amount at any time. In the event any surety shall be found insufficient, the Contractor shall furnish a new bond with sufficient surety within ten (10) calendar days after the day he is notified of the insufficiency or within such further time as the Contracting Officer may allow.

3.6. FAILURE TO ENTER INTO CONTRACT. If the bidder to whom the contract is awarded, fails or neglects to enter into the contract and furnish the bond for faithful performance as prescribed in subsections 3.4 and 3.5 and the copies of insurance policies prescribed in subsection 4.4, the bid deposit which accompanied the bid of such bidder pursuant to subsection 2.7 shall be forfeited or in the case where such bid deposit was in the form of a surety bond, the proceeds representing the bid deposit shall be collected under the surety bond and the amount so forfeited or collected shall be paid to the County. Upon such failure or neglect, the Contracting Officer may award the contract to the next lowest responsible bidder or publish another call for bids, as, in his judgment, may be in the best interest of the County.

## SECTION 4 — LEGAL RELATIONS AND RESPONSIBILITY

### 4.1. INDEPENDENT CONTRACTOR.

- A. The Contractor shall perform the contract as an independent contractor and shall indemnify and save the County, its Officer, agents, and employees harmless from all liability and loss for any injury, death or damages to persons or property arising out of the performance of the contract.
- B. The Contractor shall indemnify and save the County, its officers, agents, and employees harmless from any and all claims for infringement by reason of the use of any patented design, device, process or material, in connection with work to be performed under the contract.
- C. The obligations of the Contractor under Paragraph 4.1A shall not extend to the liability of the County, and its officers and employees because of negligence in (1) the preparation of maps, plans, drawings, land surveys, designs or specifications, or (2) the giving of directions or instructions with respect to the requirements of the contract by written order; provided that, such giving of directions or instructions is the primary cause of the injury or damage.

4.2. LAWS, REGULATIONS. The Contractor shall keep himself fully informed of all present and future laws, regulations and ordinances which affect the contract and the performance thereof, including but not limited to:

- A. Chapter 103, Hawaii Revised Statutes, relating to expenditure of public money.
- B. Chapter 104, Hawaii Revised Statutes, relating to wages and hours of employees on public works.
- C. Chapter 376, Hawaii Revised Statutes, relating to industrial safety.
- D. Chapter 386, Hawaii Revised Statutes, relating to workman's compensation.



E. Chapter 321, Hawaii Revised Statutes, relating to Health Department.

F. Section 507-17 Hawaii Revised Statutes, relating to recovery on bond for materials and labor used on public works.

G. Chapter 378, Hawaii Revised Statutes, relating to fair employment practices.

The Contractor shall comply with all such present and future laws, regulations and ordinances, including the giving of all notices necessary and incident to the performance of the contract. If any discrepancy or inconsistency is discovered between the contract and any such law, regulation or ordinance, the Contractor shall forthwith report the same in writing to the Officer-in-Charge.

4.3. PERMITS, LICENSES. The Contractor shall obtain all permits and licenses required by the County, State, or Federal Government and pay all charges and fees therefor.

4.4. INSURANCE. The Contractor shall, at his own expense procure and maintain during the period of the contract insurance coverage in an amount of not less than \$100,000 for any one person, and \$300,00 for any one accident or occurrence for bodily injury liability and coverage in an amount not less than \$50,000 per accident or occurrence and \$100,000 aggregate for property damage liability.

When a subcontractor is utilized, the Contractor shall either procure and maintain or require the subcontractor to procure and maintain during the period of the contract, insurance coverage with the same bodily injury and property damage liability limits specified above, covering accidents caused by actions of the subcontractor or his employees.

The Contractor shall also procure and maintain during the term of the contract contractual liability insurance in the same limits of liability as specified above, to specifically cover its assumption of liability as provided in subsection 4.1 of these provisions.

The Contractor shall, in addition, procure and maintain insurance covering the project and parts of the project until the final acceptance of the performance of the work, under the contract by the Contracting Officer against loss by fire, wind, storm, lightning, explosion, vandalism, and malicious mischief. Risk of such loss prior to acceptance shall lie with the Contractor.

All of the insurance policy or policies herein prescribed shall be procured and maintained at no expense to the County, and shall have the County named as one of the insured; provided that where the County may be named as an insured under the rules applicable to any policy or policies, the Contractor shall procure and maintain at no expense to the County owner's and contractor's protective insurance providing the County with the same coverages and limits of liability as are required herein for the Contractor. A copy of such policy or policies shall be furnished to the Director of Finance of the County of the time prescribed in subsection 3.4. Such policy or policies shall contain an endorsement to the effect that the insuring company will notify the Director of Finance of the County thirty (30) days prior to the effective date of any cancellation of such policy or policies or any change in their provisions.

4.5. NO PERSONAL LIABILITY. Neither the Contracting Officer nor the Officer-in-Charge nor any other officer or employee of the County shall incur personal liability to the Contractor for any action taken in good faith.

## SECTION 5 — SCOPE OF CONTRACT

5.1. SCOPE OF CONTRACT. The scope of the contract encompasses the furnishing of, and the payment for, all materials, tools, equipment, labor and incidentals necessary for the performance of the contract by the Contractor.

5.2. MODIFICATIONS. The County may at any time, by a supplemental agreement in writing or by a written order of the Contracting Officer and without notice to the surety, make such modifications in the contract as may be recommended by the Officer-in-Charge and deemed necessary or advisable to complete the project in a substantial and acceptable manner. Modifications not involving any reduction in cost or extra cost to the County may be made by written order of the Officer-in-Charge without notice to the surety.

Upon receipt of a written order, the Contractor shall proceed with the modification as ordered. If the Contractor does not agree with any of the terms or conditions or with the amount of the reduction in cost or extra cost to the County provided for in the order, he shall file with the Officer-in-Charge a written protest setting forth his reasons in detail within ten (10) calendar days after receipt of the order. The protest shall be disposed of pursuant to the provisions of subsection 6.11. Failure to file such protest within the time specified shall constitute agreement on the part of the Contractor with the terms, conditions, and amount in the order.

## SECTION 6 — PERFORMANCE OF CONTRACT

6.1. TIME. Time is of the essence of the contract. Performance of the contract shall be commenced on the commencement date designated in the notice to proceed and shall be completed within the contract time specified in the contract or as computed or extended in accordance with the provisions of subsection 6.2.

- (a) When the contract time is on a working day basis, the Officer-in-Charge will furnish the Contractor a weekly statement showing the number of days charged to the contract for the preceding week and the number of days specified for completion of the contract. The Contractor will be allowed seven (7) days in which to file a written protest setting forth in what respect said weekly statement is incorrect; otherwise the statement shall be deemed to have been accepted by the Contractor as correct.
- (b) When the contract time is on a calendar day basis, it shall consist of the number of calendar days stated in the contract beginning with the effective date of the NOTICE TO PROCEED, including all Sundays, holidays and non-working days. All calendar days elapsing between the effective dates of any orders of the Officer-in-Charge to suspend work and to resume work for suspensions not the fault of the Contractor shall be excluded.

6.2. DELAY. If any delay in the performance of the work under the contract occurs as a result of unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, acts of the public enemy, acts of the County with respect to the contract, acts of another Contractor in the performance of a contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers, then the Contractor shall be granted an extension of the time for the performance of the contract corresponding to the delay. However, no extension of time shall be granted unless a written application therefore stating in detail, the causes, the effect on the performance of the contract, the time during which the performance was actually suspended, the portion or portions of the project affected, is filed by the Contractor with the Officer-in-Charge within seven (7) calendar days after the commencement of the delay. The number of days of each extension of time shall be determined by the Contracting Officer upon recommendation of the Officer-in-Charge. No such extension shall be deemed a waiver of the right of the Contracting Officer to require the performance of the contract within the time required herein as so extended by the specific terms of such extension or extensions, nor a waiver of rights to terminate the contract for any other or additional delay not covered by the specific terms of such extension or extensions.

6.3. PERFORMANCE SCHEDULE. Within seven (7) calendar days after the commencement of the work under the contract, or such further time as may be allowed by the Officer-in-Charge, the Contractor shall submit for the approval of the Officer-in-Charge, a practicable schedule showing the proposed order of the performance of the contract. The date on which parts of the project, including the procurement of materials, plant and equipment, have been or will be started, and the contemplated dates for completion of parts of the project. If the schedule is not approved, it shall be revised as directed by the Officer-in-Charge. After approval, no changes in the schedule shall be made without the approval of the Officer-in-Charge. The schedule shall be used as a basis for establishing major construction operations and as a check on the progress of the work performed under the contract.

#### 6.4. FIELD OFFICE AND FIELD TELEPHONE.

A. FIELD OFFICE. If required in the special provisions, the Contractor shall provide a field office for the Officer-in-Charge at a location designated by the Officer-in-Charge. It shall be available within seven (7) calendar days after the commencement of the work under the contract. The field office shall be weather-proof and not less than 120 square feet in gross floor area. The aggregate window areas of the office shall not be less than 10 per cent of the floor area, and one exterior door shall be provided with a keyed cylinder-type lock. The office shall be furnished with one drafting type table having a dimension of not less than 3' x 6' and a stool, adequate plan racks and hangers, one desk, two chairs, shelves, a broom, telephone service, electric lighting, paper towels, paper cups, soap, toilet paper and potable water, and shall be maintained in good repair and in a clean and sanitary condition by the Contractor. If the office is not equipped with a water closet and lavatory, the Contractor shall make other arrangements to provide such facilities for the Officer-in-Charge.

B. FIELD TELEPHONE. If required in the special provisions, the Contractor shall provide a field telephone for the Officer-in-Charge. Such field telephone shall be placed at a convenient and accessible location and housed in a box provided with a door which may be secured by a keyed cylinder-type lock.

6.5. SPECIAL PROVISIONS, PLANS, SPECIFICATIONS TO BE KEPT ON SITE. The Contractor shall keep a copy of the special provisions, plans, and specifications of the contract on the site of the project readily accessible for reference.

6.6. ADDITIONAL PLANS AND SPECIFICATIONS TO BE FURNISHED BY THE OFFICER-IN-CHARGE. The Officer-in-Charge may furnish by written order such additional plans and specifications, during the performance of the contract as may be necessary to clarify the contract or define it in greater detail, and the Contractor shall comply with such additional plans and specifications. Such additional plans and specifications shall become a part of the contract.

6.7. DRAWINGS TO BE FURNISHED BY CONTRACTOR. The Contractor shall make and supply such working or shop drawings as may be required by the Officer-in-Charge during the performance of the contract. The drawings shall be finished plans, and shall be neat, legible and drawn to scale.

The Contractor shall submit six (6) prints of working or shop drawings to the Officer-in-Charge for approval as to method of construction and design prior to the commencement of the work under the contract or the delivery to the project site of any equipment or material covered by the drawings, whichever is later. The Officer-in-Charge may require the drawings to be resubmitted as often as necessary to render them complete, legible and free of extensive corrections. If a resubmittal is required, the Officer-in-Charge shall return one (1) print to the Contractor who shall make all the corrections or drawings for approval.

After approval, no working or shop drawings shall be changed without the written approval of the Officer-in-Charge and the Contractor may proceed with the parts of the project called for in such drawings.

Approval of working or shop drawings by the Officer-in-Charge shall not be construed to relieve the Contractor of responsibility for accuracy of dimensions and details and duty to perform the contract in accordance with the terms, covenants, conditions, provisions and intent thereof.

Catalogue cuts or similar reproductions may be substituted for working or shop drawings in the case of assembled electrical and mechanical units when they show sufficient information.

6.8. COORDINATION OF SPECIAL PROVISIONS, PLANS, SPECIFICATIONS, AND OTHER PARTS OF THE CONTRACT. The special provisions, plans, specifications, and other parts of the contract are intended to complement each other. Unless it is apparent that a different order of precedence is intended, special provisions shall govern over plans, specifications, and these provisions; plans shall govern over specifications and these provisions.

6.9. OMISSION IN CONTRACT. Work incidental to the contract although not specifically referred to in the contract shall be furnished and performed by the Contractor. Labor, materials and equipment directly or indirectly necessary to complete the construction of the project, whether or not the same may have been expressly provided for in the contract, shall be furnished and performed by the Contractor.

6.10. CONTRACTOR TO REPORT ERRORS OR DISCREPANCIES. The Contractor shall notify the Officer-in-Charge in writing immediately upon discovery of any error or omission in the layout given by stakes, points or instructions furnished by the Officer-in-Charge, or any discrepancy within the contract, or any part thereof or between the plans and the conditions of the site.

After such discovery, the Contractor shall proceed with the performance of the contract only after receiving written approval from the Officer-in-Charge.

6.11. DECISIONS OF THE OFFICER-IN-CHARGE. The decision of the Officer-in-Charge on any question or dispute concerning any provision of the contract which may arise during its performance shall be final and binding upon all parties, provided that decisions on questions or disputes relating to acceptance of the work performed under the contract, suspension or termination of the contract, extension of time, reduction in cost or extra cost to the County and payment shall become final and binding upon all parties only upon approval of the Contracting Officer, and provided further that if the reduction in cost or extra cost to the County as a result of a written order of the Contracting Officer pursuant to Subsection 5.2, the amount of such cost shall be determined on the basis of a force account pursuant to Subsection 7.3. Pending the final decision of any dispute or question, other than a question or dispute on the amount of the reduction in cost or extra cost to the County the Contractor shall proceed diligently with the performance of parts of the project not directly affected by such dispute or questions.

#### 6.12. CONTROL OF THE CONTRACT.

A. Workmanship. The contract shall be performed in an orderly and workmanlike manner in accordance with the latest acceptable practice and shall be of the best quality, except as clearly specified otherwise.

- B. Access to the Project. During the performance of the contract, the Contractor shall provide the Officer-in-Charge with proper and safe facilities for access to the site of the project and the shops of the Contractor and the subcontractor.

Other Contractors of the County shall be permitted access to the site of the project when it is required for performance of their respective contracts.

- C. Inspection. The performance of the contract shall be subject to the inspection of the Officer-in-Charge and the Contractor shall supply such information and assistance as may be required to make a complete and detailed inspection.

If the Contractor wishes to work at such time of the day which is during the period other than the regular business hours of the County, or on a Saturday, Sunday or legal State holiday, he shall make a written request for inspectional services during such period. If such a request is made and granted, the Contractor shall notify the Officer-in-Charge not less than 24 hours in advance of the time when the inspectional services are required. The Contractor shall pay the County at the rate per hour designated in the special provisions for each inspector provided pursuant to this paragraph.

- D. Samples and Test Specimens. When required by the Officer-in-Charge test specimens or samples of materials, appliances and fittings to be used or offered for use in the performance of the contract shall be prepared and furnished by the Contractor in such quantities and sizes as may be required for proper examination and tests, with information as to their sources.

The Contractor shall furnish additional test specimens and samples as directed.

Test specimens and samples shall be submitted in ample time to enable the Officer-in-Charge to make such tests or examinations as may be necessary. Laboratory tests and examinations made in a laboratory other than that of the County shall be at the expense of the Contractor.

E. Tests. Tests specified by the contract, statute, regulation or ordinance shall be made and the cost thereof shall be borne by the Contractor unless otherwise provided for in such contract, statute, regulation or ordinance. Such tests shall be conducted under the direction of the Officer-in-Charge and the Contractor shall repair any damage resulting therefrom.

In addition, the Officer-in-Charge may require such tests as he deems necessary to carry out his duties during the performance of the work under the contract. When a test is required by the Officer-in-Charge, the Contractor under the direction of the Officer-in-Charge shall conduct such test and shall bear all of the costs, including the cost of tools, labor and materials necessary therefor.

6.13. PERSONAL SUPERVISION. The Contractor shall be present on site in person, or by a responsible agent with authority to act for the Contractor in connection with the contract during the performance of the contract.

The Contractor shall file with the Officer-in-Charge a written statement signed by the Contractor giving the names of any and all foreman and employees who are authorized to act in place of the Contractor, and any communication signed in behalf of the Contractor by such agents shall bind the Contractor. The Contractor shall be responsible for notifying the Officer-in-Charge immediately and in writing of any change in the name or names so submitted.

6.14. CHARACTER OF WORKMEN, METHODS AND EQUIPMENT. The Contractor shall employ persons who possess the skill required to perform the work under the contract.

When required by the Officer-in-Charge, the Contractor shall replace any employee who lacks the skill to perform the work assigned to him or is discourteous or disorderly while performing such work. A person who has been replaced may be assigned other work with the approval of the Officer-in-Charge.

The Contractor shall use proper and efficient methods and equipment for the performance of the contract.



6.15. WAGES. The Contractor shall pay laborers whose rate of compensation is Five Dollars (\$5.00) or less per day at least once each week.

If the aggregate amount of the contract exceeds \$2,000, the Contractor shall:

- A. Pay employees not less than the minimum wages for such employees provided for in the special provisions.
- B. Post the rates of minimum wages in a prominent and easily accessible place at the site of the project, and give a copy thereof to each employee at the time he is employed as provided in Chapter 104, Hawaii Revised Statutes.
- C. Pay employees their wages accrued up to not more than five (5) working days prior to payment, with no deductions or rebates other than those allowed by law at least once a week.
- D. Submit a certified copy of the payroll to the Officer-in-Charge each week.
- E. Pay employees not less than one and one-half times the basic hourly rate of pay for such employees for work in excess of eight (8) hours in a day or work in excess of forty (40) hours in a week or for work on Saturday, Sunday or legal holiday of the State.
- F. Require his subcontractor to comply with the foregoing provisions.

6.16. CONTRACTOR'S ADDRESS. The Contractor shall provide and maintain a post office address within the County and file the same with the Officer-in-Charge. Any written order or notice which may be required or desirable under the contract may be served on the Contractor personally, or delivered to his representative on the project site, or left with a member of his family of suitable age and discretion at his residence, or with any employee of the Contractor at his place of business and/or mailed to the aforesaid local post office address. All orders or notices shall become effective when mailed or at the time of service or delivery as aforesaid.

6.17. SURVEYS AND CONSTRUCTION STAKES, LINES AND GRADES.

- A. For projects of the Building Department of the County, all lines, levels and elevations are to be laid out and checked by a surveyor or civil engineer licensed in the State of Hawaii at the Contractor's expense. The Contractor shall furnish a certificate or document signed by the surveyor or civil engineer certifying that the completed lines, levels and elevations are in conformity with the contract. The Contractor shall verify all lines, levels and elevations indicated in the contract before any clearing, excavation or construction begins.

Any discrepancy shall be immediately brought to the attention of the Officer-in-Charge and any change shall be made in accordance with his instruction. The Contractor shall not be entitled to any additional payment if he fails to report the discrepancies before proceeding with any work, whether or not such work is performed within the area affected by the discrepancies.

- B. For other projects, the Officer-in-Charge shall furnish all land surveys, base lines and stakes for locating the principal parts of the projects together with a suitable number of bench marks adjacent to the project site except when otherwise noted in the special provisions. Except when otherwise noted in the special provisions the Officer-in-Charge shall set construction stakes establishing lines and grades and bench marks for the Contractor's guidance. The Contractor shall notify the Officer-in-Charge not less than two working days before a need for stakes arises. Stakes which have been set at the project site shall not be disturbed without the approval of the Officer-in-Charge.

6.18. SUBCONTRACTING. The Contractor shall not subcontract any part of the contract except to those subcontractors, specifically listed in the bid submitted by the Contractor; provided, however, the Contractor may for good cause and upon written approval of the Contracting Officer engage other subcontractors. A subcontractor and his employees shall be considered employees of the Contractor. Engaging subcontractors to perform the work under the contract shall not relieve the Contractor of his duty to perform the contract in accordance with the terms, covenants, conditions, provisions and intent thereof. The Contractor shall replace a subcontractor when required by the Officer-in-Charge for not performing the contract in accordance with the terms, covenants, conditions, provisions and intent thereof.

6.19. ASSIGNMENT OF CONTRACT. Subject to the provisions of subsection 6.18, no assignment shall be made for the performance of any part of the work under the contract without the written approval of the Contracting Officer.

6.20. OTHER CONTRACTS. The Contractor shall coordinate his operations with those of other Contractors who may be employed on adjacent or related projects of the County, shall avoid interference therewith, and shall cooperate with the other Contractors so as to avoid unnecessary delay or hindrance in the performance of their respective contracts. Any difference or conflict which may arise between the Contractor and other Contractors of the County in regard to their projects shall be adjusted and determined by the Contracting Officer, whose decision and order shall be final and binding.

6.21. WATER REMOVAL. The Contractor shall examine the site of the project and make all necessary arrangements with affected property owners for the removal of water from the site. The Contractor shall provide a bridge or other facilities to prevent water flowing into adjacent streets as a result of his activities, from interfering with the traffic on such streets.

6.22. ELECTRICAL AND WATER SERVICE. The Contractor shall make his own arrangements for electrical and water services required for the performance of the contract at his expense.

6.23. UTILITIES, UNDERGROUND. All underground water, gas, oil, telephone, electric, storm drain, sewer and other pipes or conduits, if shown on the plans, are only approximate in their locations. The Contractor shall make a personal investigation and inspection of the records of the owners of the utilities, supplemented by actual digging in the field if necessary to determine the actual locations of such utilities with all their branch and service lines whether indicated on the plans or not. The Contractor shall make satisfactory arrangements with the owners of the utilities for the relocation, maintenance and protection of existing utilities and shall furnish the Officer-in-Charge with evidence in writing that satisfactory arrangements have been made not less than ten (10) days before the commencement of the parts of the project under the contract affecting such utilities.

6.24. QUALITY OF MATERIALS AND EQUIPMENT. Materials and equipment installed as part of any permanent construction shall be new, unless otherwise specified. The contract contemplates the use of first-class materials and equipment throughout the performance of the contract, and it is agreed that any material for which no particular specification is given shall be of the highest qual-

ity of its class or kind. All materials and equipment used shall be mined, produced or manufactured in the United States of America. Substitutes for American products will be permitted only with prior written approval of the Contracting Officer.

6.25. SAMPLES. Whenever requested by the Officer-in-Charge, the Contractor shall furnish samples of materials to be used in the performance of the contract. Said samples if approved, will be retained by the Officer-in-Charge and, subject to his order, shall be used as the standard with which all like materials furnished under the contract must conform. The approval of any sample tested by the Officer-in-Charge or his failure to require the furnishing of samples shall not relieve the Contractor from performing the work in accordance with the contract.

6.26. PROTECTION OF PEDESTRIANS AND VEHICULAR TRAFFIC. The Contractor shall employ such methods in the performance of the contract and provide such barriers, guards, temporary bridges, detours, notices, lights, warnings and other safeguards as may be necessary to prevent injury to persons and property. The Contractor shall define the line of safe passage with suitable lights wherever the public may have access to the site of the project, during the hours from one-half hour before sunset to one-half hour after sunrise.

6.27. ACCESS TO PROPERTY. The Contractor shall provide safe access to property abutting the site of the project when the usual means of access are obstructed by the performance of the contract.

6.28. PROJECT SIGN. If required in the special provisions, the Contractor shall provide signs to identify the project. The signs shall be erected at locations designated by the Officer-in-Charge at the site of the project upon commencement of the work under the contract. Signs shall be properly erected and kept clean and legible. After completion of the work under the contract and final acceptance thereof, the Contractor shall remove the signs as his property.

6.29. PROJECT MAY BE PLACED IN SERVICE. The County may place parts of the project in service as completed and the Contractor shall give proper access to such portions for this purpose. Use of the portions so placed in service by the public shall constitute an acceptance by the County of such portions of the project involved.

6.30. RESTORATION AND PRECAUTIONS. The Contractor shall protect property adjacent to the site of the project from damage and shall restore property damaged by him to the condition it was in prior to the damage.

- A. Buildings and Other Structures. If the site of the project passes close to or under buildings and other structures, the Contractor shall protect all such buildings and structures by suitable means from any and all damages.
- B. De-watering. De-watering shall be accomplished by suitable means. The Contractor shall repair any and all damages resulting to improvements from such de-watering operation to the satisfaction of the owners of such improvements.
- C. Pavement, Curb and Gutter. The Contractor shall replace, restore and repair pavements, gutters and curbs damaged or removed by him.
- D. Fences. The Contractor shall replace fence removed by him. Precautions shall be taken to prevent livestock from escaping when fences enclosing them are removed.
- E. Grass. When lawns are disturbed by trenching the area over the trench shall be carefully graded and replanted with similar grass spaced not over 6" x 6" center to center, leaving the area over the trench substantially similar to the condition it was in prior to the excavation.
- F. Trees and Shrubbery. Trees and shrubbery which must be disturbed shall be transplanted under the direction of the owner or lessee of the property to some other site and, upon completion of the backfill, shall be replanted on the original site, to the satisfaction of the said owner or lessee.
- G. Property Marks. The Contractor shall reference and replace marks, stakes, pipes, monuments of the property line and similar objects which may be disturbed by the Contractor while performing the contract.

H. Sidewalks, Patios, Driveways and Other Like Concrete Construction. When trenches are to be made across concrete sidewalks, patios, driveways, and other like concrete construction, the Contractor shall make neat cuts in the concrete with pavement saws, or other means approved by the Officer-in-Charge, and shall thoroughly compact the back-fill and reconstruct such construction with concrete similar to the existing construction.

I. Topsoil. Where private land under cultivation is disturbed, the Contractor shall place the upper 12 inches of topsoil to one side, which shall not be mixed with the general excavated material. After backfill has been made to within 12 inches of the surface, the topsoil shall be replaced.

J. Walls, Rock and Masonry. The Contractor shall replace rock and masonry walls removed by him.

6.31. MAINTENANCE OF SITE, CONTROL OF DUST, AND FINAL CLEANUP. The Contractor shall maintain the site of the project in an orderly and clean condition, and shall at suitable intervals remove accumulations of rubbish or refuse materials, surplus concrete, mortar and excavated materials not required or suitable for backfill. Washings from concrete mixers or mixing boxes shall not be deposited in the drainage or sewer system of the County on paved streets. The Contractor shall keep the site, inclusive of vehicular and pedestrian traffic routes through the site, free of dirt and dust by periodic blading, power brooming, watering or other approved means.

Upon completion and before final acceptance of the work performed under the contract, the Contractor shall remove rubbish, surplus or discarded materials, falsework, forms, temporary structures, field offices, project signs, signs not a part of the project, and his equipment and machinery, and shall leave the site and ground occupied by him in connection with the performance of the contract in an orderly and clean condition. Buildings constructed, altered, or worked in by the Contractor in the performance of the contract shall be left "broom clean", and stains and other blemishes resulting from his operations, such as dropped or splattered concrete or mortar and paints, shall be removed from floors, walls, ceiling, windows and all other exposed surfaces.

6.32. RESPONSIBILITY OF THE CONTRACTOR TO ACCEPTANCE. The Contractor shall repair, reconstruct, restore and replace the work or any part thereof which is injured or damaged, whatever cause, prior to acceptance of the work by the Officer-in-Charge with the approval of the Contracting Officer.

Use by the public without permission of the Officer-in-Charge and/or Contracting Officer shall not in any way be construed as an acceptance of the work under the contract and shall not in any way relieve the Contractor from his obligation under the contract. Use of parts of the project completed under the contract by the public with the written permission of the Officer-in-Charge with the approval of the Contracting Officer shall constitute acceptance of such portion of such work by the County.

In case of suspension in the performance of the work under the contract from any cause whatsoever, the Contractor in addition to being responsible for performing the work under the contract shall:

- A. Indemnify and save the County and its officers and employees harmless from liability for any injury or damage occurring during the period that the performance of the contract is suspended.
- B. Be responsible for all materials and equipment delivered to the site of the project, including materials and equipment for which he has received partial payment.
- C. Properly store the materials and equipment which have been partially paid for by the County or which have been furnished by the County.
- D. Remove immediately as directed by the Officer-in-Charge all surplus materials, equipment and rubbish.
- E. Neatly and compactly store all materials and equipment on the site of projects within public highways or streets so as not to impede traffic or interfere with the use of public utilities or facilities.
- F. Provide suitable drainage and erect such temporary structures as are necessary to protect the project or parts of the project from damage.

## SECTION 7 — PAYMENT

7.1. PAYMENT. The Contractor shall be paid the contract price as full compensation for the performance of the contract.

For lump sum contracts, the contract price shall be result obtained by first reducing the amount designated as the total sum bid in the award by the amount included therein for allowances and contingencies and adding thereto or deducting therefrom any extra cost of any reduction in cost, respectively, to the County as a result of supplemental agreements in writing and written orders of the Contracting Officer pursuant to subsection 5.2.

For unit price contracts, the contract price shall be the sum of results obtained by multiplying the number of units of such item incorporated in the work under the contract by the unit price therefor. The unit price of an item shall be the amount therefor specified in the bid, provided that if the number of units of any major item incorporated into the performance of the work under the contract either exceeds or is less than the number specified in the bid as the County's estimate of quantity of units required by more than twenty-five per cent (25%), then an adjustment to be applied as hereinafter provided shall be made in the unit price for the item by supplemental agreement or at the option of the Officer-in-Charge by first determining the cost of the item on the basis of a force account pursuant 7.3 and dividing the cost by the number of units of the item incorporated into the performance of the work under the contract. If the adjustment results in an increase in the unit price, then such increased unit price shall only apply to the number of units of the item incorporated into the performance of such work in excess of one hundred and twenty-five per cent (125%) of the quantity specified in the bid. If the adjustment results in a decrease in the unit price, then such decreased unit price shall apply to all units of the item incorporated into the performance of the work under the contract. For the purpose of this paragraph, a major item is any item which is equal to or greater in cost, based on the quantity of the item specified in the bid multiplied by the unit price therefor specified in the bid, than ten per cent (10%) of the amount designated as the total sum bid in the award.

7.2. QUANTITIES AND MEASUREMENTS. All quantities of work completed under the contract shall be measured by the Officer-in-Charge. These measurements shall be considered correct and final unless the Contractor files a written protest demonstrating the existence of an error within ten (10) calendar days after receipt of such measurement data.



Quantities or measurements indicated in the bid, if any, are given for the convenience of the Contractor. It will be assumed that the lump sum bid and unit prices made by the Contractor and the Price agreed upon by him are based on a thorough knowledge of the existing conditions and the amount and kind of work to be performed. It is expressly understood and agreed by the Contractor that quantities and measurements of the work to be done and the materials to be furnished under this contract which have been estimated, as given are approximate. The Contractor further agrees and hereby understands that neither the Officer-in-Charge, Contracting Officer, the County nor any of them is to be held responsible if such estimated quantities and measurements shall not be found to be the same or even close to the actual quantities and measurements required for the work under the contract. The Contractor will make no claim for anticipated profits, or for loss of profits because of a difference between the quantities or measurements of the work actually done, or of material actually delivered, and the estimated quantities or measurements stated in the bid. If an error, omission or mis-statement shall be discovered in the quantities or measurements stated in the bid, the same shall not vitiate the contract, or release the Contractor or his surety or sureties from performing the contract, or affect the price agreed to under the contract, or excuse the Contractor from any of the obligations or liabilities under the contract, or entitle him to damages or compensation, except as provided herein.

7.3. FORCE ACCOUNT. In force account, cost shall be the sum of cost of the following items:

1. Labor, including that of foreman in direct charge of the work made subject to force account. This item does not include general superintendence, time keeping and office work. The wages for labor shall not exceed the rate of wages paid for similar labor performed under the contract, as evidenced by the record of the Contractor's payroll on file with the Officer-in-Charge, and shall be agreed upon in writing before beginning such work made subject to force account, except when such prior agreement is not possible in adjusting the unit price of major items under subsection 7.1 or in determining the value of the work performed in canceling the contract under subsection 8.9.
2. Material entering permanently into the work under the contract as shown by the original receipted bills therefor.
3. Premiums for public liability and workmen's compensation insurance on the labor as determined in item 1 above and contributions for State-unemployment compensation and social security taxes.

4. Fifteen per cent (15%) of the cost of items 1, 2 and 3 above.

5. Reasonable rental for machinery or equipment, other than small tools and minor equipment, which may be necessary or desirable to perform the work subject to force account. The rental shall be determined and agreed to in writing before performance is started on work made subject to force account, except when such prior agreement is not possible in adjusting the unit price of major items under subsection 7.1, or in determining the value of the work performed in canceling the contract under subsection 8.9. The rental shall not exceed the current local rate for such machinery and equipment and shall include the cost of fuel, lubricants and repairs. The term "small tools and minor equipment" shall include individual equipment or tools having a replacement value of \$25.00 or less, whether or not they are consumed in the use thereof.

6. To the sum of the costs of labor, materials, premiums and contributions (under item 3) and rental for machinery or equipment (including the 15% applied to costs of items 1, 2 and 3), there shall be added a sum equal to four per cent (4%) thereof for gross income tax.

The above percentages shall be applied but once to the respective costs as provided above and dual percentages costs by reason of a subcontractor performing on behalf of the prime contractor will not be allowed.

The Contractor shall submit records of items 1, 2 and 5 to the Officer-in-Charge at the end of each day. Such records submitted shall be subject to the approval of the Officer-in-Charge as evidenced by his signature thereon. The Contractor shall submit a statement covering the cost of all of the above items not later than the 10th day of the month following the month in which the costs were incurred.

The Officer-in-Charge may reject any machinery which he deems unnecessary, inefficient or inadequate for the work to be performed under force account.

7.4. PAYMENTS DURING PERFORMANCE OF WORK. The Contractor shall immediately after the commencement of his work under the contract submit to the Officer-in-Charge a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, made out in such form as the Officer-in-Charge and the Contractor may agree upon, and, if required, supported by such evidence as to its correctness as the Officer-in-Charge, may direct. The schedule, when approved by the Officer-in-Charge, shall be used as a basis for payment under the contract.

The Officer-in-Charge shall, not later than the fifteenth (15th) day of each month during the performance of the contract, make an estimate of the amount of work done in accordance with the contract during the immediately preceeding month, deducting sufficient allowance for incomplete or unprotected work or to provide for any contingency for defects or damage to said work or for the necessity of performing any part of the work over again to cure defects or damage.

Progress payments to the Contractor shall be for a sum equal to ninety (90) per cent of the above estimate, less previous payments and sums withheld by the County pursuant to the contract.

After fifty (50) per cent of the work to be performed under the contract has been completed, progress payments may be for one hundred (100) per cent of the above estimate, less (1) the ten (10) per cent withheld from the previous payments to the Contractor during the performance of the first fifty (50) per cent of the work required under the contract, (2) other sums withheld by the County pursuant to the contract and (3) previous payments; provided that, if the completion of the work under the contract is being delayed through no fault of the Contractor, the Contracting Officer, upon recommendation of the Officer-in-Charge, may make additional payments from the amount withheld under (1) above, to the extent that such amount withheld is not required for the protection of the County.

7.5. PAYMENT FOR DELIVERED MATERIALS. No payment for any material delivered to the site of the work under the contract will be made until said material is incorporated into the parts of the project required to be constructed under the contract, except that the Officer-in-Charge may, to the extent provided for in the contract, include in his monthly estimate for progress payment an amount up to ninety (90) per cent of the delivered cost of specialized materials or equipment usable only for the contract.

7.6. ASSIGNMENT OF MONEY DUE OR PAYABLE. Assignments of money due or to become payable to the Contractor under the contract shall not be valid without the prior written consent of the Director of Finance of the County. The rights of the assignee to moneys due or to become due to the Contractor under the contract shall be subject to subsection 8.8.

7.7. FINAL INSPECTION — FINAL PAYMENT. After completion of the work required under the contract and final acceptance thereof by the Contracting Officer, the Contractor will be paid the balance due in accordance with the Officer-in-Charge's final estimate of the construction actually performed, provided that final payment will be made only with the approval of the Contracting Officer, and the written consent to the surety or sureties on the Contractor's bond after receipt of a certificate from the Director of Taxation of the State of Hawaii, as provided in Section 103-53, Hawaii Revised Statutes.

## SECTION 8 — REMEDIES

8.1. SUSPENSION OF WORK. For any cause, the Officer-in-Charge with the approval of the Contracting Officer may upon seven (7) calendar days notice suspend the performance of the contract, without additional cost to or claim against the County. Such notice shall be service upon the Contractor and his surety or sureties. The Contractor shall re-commence performance of the work under the contract upon service of a written order to do so by the Officer-in-Charge with the approval of the Contracting Officer.

8.2. TERMINATION OF CONTRACT — WORK MAY BE TAKEN OVER BY COUNTY. The County through its officers as hereinafter provided may terminate the contract, or require the work therein to be completed by the surety or sureties under the Contractor's bond or take over such work as hereinafter provided without terminating the contract, if the Contractor:

A. fails to begin work under the contract at the time required,

B. is unnecessarily delaying the performance of the contract or any part thereof,

- C. is failing to perform the contract with sufficient, or adequate workmen, equipment or materials or is not making sufficient progress to ensure the completion of the contract within the time specified,
- D. fails to perform the contract in accordance with directions of the Officer-in-Charge,
- E. discontinues performance of the contract,
- F. fails to re-commence performance of the contract within a reasonable time after service of a written order to do so if the performance had been suspended,
- G. becomes insolvent or is declared bankrupt,
- H. commits any act of bankruptcy or insolvency,
- I. allows any final judgment to stand against him unsatisfied for a period of ten (10) days,
- J. makes an assignment for the benefit of creditors,
- K. fails to pay for all labor, tools, materials, and equipment,
- L. has been or is paying wages to any laborer or mechanic employed on the job site at a rate below the minimum rate specified in the contract,
- M. has failed to pay full compensation for overtime work by any such laborer or mechanic,
- N. has abandoned the performance of the contract,
- O. has made unjustifiable and substantive changes from the condition set forth in his original itemized bid as provided in Section 103-33, Hawaii Revised Statutes,
- P. or violates or fails to perform the contract in accordance with the terms, covenants, conditions, provisions and intent thereof.

Whenever the Officer-in-Charge is not satisfied with the performance of the contract, the Officer-in-Charge with the approval of the Contracting Officer may make specified orders as to the progress or conduct of such work, giving the Contractor a definite period within which to comply with such orders; or whenever the Contractor shall be in default in any particular, the Officer-in-Charge with the approval of the Contracting Officer shall serve the Contractor, or his authorized representatives, with a written notice to remedy said default or any part thereof within seven (7) calendar days after notice thereof, serving copies of such notice to the surety or sureties of the Contractor as the case may be. If, after the expiration of the time of such notice, the Contractor has failed to comply with said notice, or the default continues, the Officer-in-Charge with the approval of the Contracting Officer may order all payment under the contract to cease and the work to be discontinued. Upon such order the Contractor shall discontinue the work. Failure on the part of the Officer-in-Charge to order a discontinuance of the work or payment for the same to cease shall in no event be construed as an acceptance of the work, nor as a waiver of any failure or any default.

Immediately upon or after ordering the Contractor to discontinue the work, the County, through the Contracting Officer may require the completion of the contract by the surety or sureties upon the Contractor's bond, or (without prejudice to the County to rely upon said bond), the County's contract to a second Contractor or Contractors, or may direct the Officer-in-Charge to enter upon the work and to use such materials, tools and equipment as he may find upon the work and to procure labor, additional tools, materials and equipment for the completion of the work, and to complete said work in such a manner as he may deem advisable, and in such event the cost or expenses of completing the work and the delay result therefrom shall be a charge against the Contractor and/or his surety or sureties.

8.3. COSTS OF COMPLETING CONTRACT. The Contractor shall pay the County for all costs incurred to complete the work under the contract if the County takes the work out of the hands of the Contractor pursuant to the provisions of subsection 8.2, and for damages for any delay in the performance of the contract.

#### 8.4. DAMAGES FOR DELAY.

A. Liquidated Damages. The amount of damage to the County as a result of failure to complete the work under the contract within the time fixed or any extension thereof, exclusive of overhead expenses, being certain but difficult, if not impossible, to ascertain, the Contractor agrees to pay the sum stated in the contract as liquidated damages, and not by way of penalty, for every day of delay until the work under the contract is completed and accepted, or a reasonable time has expired for completion and acceptance of the portion of the contract remaining to be performed if the County takes the work under the contract out of the hands of the Contractor pursuant to subsection 8.2.

B. Overhead Expenses. In addition to the liquidated damages specified above, the Contractor shall pay the expenses of the County of Engineering, superintendence, inspection, travel and other overhead expenses during the period of the delay.

C. Delay caused by the County. Neither the County nor the Contractor shall be entitled to damages for any delay caused by the County in the performance of the work under the contract. In such event, however, the County shall grant the Contractor an extension of time pursuant to subsection 6.2.

8.5. DAMAGES FOR EXTRA EXPENSES IMPOSED ON COUNTY. The Contractor shall pay the County for all the expenses incurred in re-doing any of the County's obligations under the contract because of any actions or conduct of the Contractor, including the replacing of marks or stakes set by the Officer-in-Charge.

8.6. DEFECTIVE WORK. Any defective work, workmanship or materials that may be discovered in the performance of the contract before its acceptance or within one year thereafter as provided in the performance bond, shall be replaced by the Contractor with work and materials that conform to the contract at no cost or expense to the County. The fact that the Officer-in-Charge may have overlooked defective work during the performance of the contract shall not constitute the acceptance of the same. No payment, whether partial or final, shall be construed to be an acceptance of any defective work, workmanship or materials in the work performed under the contract.

The Officer-in-Charge may at any time, stop the performance of the contract or any portion thereof which is not being done in accordance with the contract by written order. Such order shall not in any way relieve the Contractor from performing the contract and shall not in any way terminate, cancel or abrogate the contract or any part thereof; and the County shall not in any way be responsible for the delay due to stopping the performance of the contract or any portion thereof as aforesaid.

8.7. UNAUTHORIZED PERFORMANCE. Performance of any work beyond the lines and grades shown on the plans or established by the Officer-in-Charge or performance of any extra work without written order will be considered as unauthorized and will not be paid for. The Officer-in-Charge may require the removal of such work by service of a written order upon the Contractor. If the Contractor fails to comply promptly with such order, the Officer-in-Charge shall remove such work and the Contractor shall pay the County for all expenses incurred in the removal of such work.

8.8. AUTHORITY TO WITHHOLD MONEY DUE OR PAYABLE. The County may withhold such amounts from the money due or to become payable under the contract to the Contractor, or any assignee under subsection 7.6, as may be necessary to:

- A. protect the County from any liability resulting from the work performed under this contract;
- B. satisfy any obligation of the Contractor to the County, including obligations not relating to the contract, and the obligation of the Contractor to the workmen, subcontractors, and materialmen who have performed labor or furnished material and equipment under the contract as provided by law; and
- C. repair, restore, or compensate for, any real or personal property located within the project site or in the vicinity thereof which has been damaged as a result of the fault or negligence of the Contractor while performing the work under this contract; provided that the estimated amount of damages for each separate property shall not be in excess of \$500.00.

The County may make such payments from such amounts withheld as may be necessary to cause the repair or restoration of the damaged properties or to compensate therefor, to discharge such obligation as provided under "B" above and to protect the County from any liability resulting from the work performed under this contract; provided, however, before making any payment for damages to property prescribed in "C" above, the County through the Officer-in-Charge shall request the Contractor in writing to undertake the repair or restoration of the damaged property or make compensation therefor. If the Contractor fails or refuses to make such repair, restoration or compensation to the satisfaction of the Officer-in-Charge within thirty (30) calendar days after such notification, the Contracting Officer upon recommendation of the Officer-in-Charge and upon his own findings that such recommendation is justified, may make the necessary payments.

8.9. SPECIAL EMERGENCY TERMINATION. In the event of a finding by the Officer-in-Charge and approved by the Contracting Officer that a national emergency exists which creates a shortage of materials, labor, or equipment and that such emergency will probably continue to exist for an indefinite length of time, or that funds are no longer available to the County by reason of which the Contractor will be unable to perform the work under the contract, the County may cancel all remaining work required to be performed under the contract by written order.



Upon such cancellation, the County shall pay the Contractor the amounts hereinafter provided. For lump sum contracts, an agreed upon price for the performance of the contract up to the time of cancellation, or at the option of the Officer-in-Charge, a price for such performance determined on the basis of a force account pursuant to subsection 7.3. For unit price contracts, the sum of the results obtained by multiplying the number of units of each item incorporated into the parts of the project performed under the contract up to the time of cancellation by the unit price therefor. For both lump sum and unit price contracts, the Contractor shall also be paid for such expenditures as in the judgment of the Officer-in-Charge and concurred in by the Contracting Officer are not otherwise compensated for and are required in the preparation and moving of equipment and materials to the site of the project, the intent being that an equitable settlement shall be made with the Contractor. No claim for loss of anticipated profits, however, shall be made or considered.

Materials obtained by the Contractor for the project, that have been inspected, tested, and accepted by the Officer-in-Charge, and that are not incorporated in the work under the contract, and which have been properly stored and maintained, will be purchased from the Contractor at actual cost as shown by receipted bills or other proper evidence of actual cost at such points of delivery as may be designated by the Officer-in-Charge.

8.10. REMEDIES NOT EXCLUSIVE. The express provision herein of certain measures which may be exercised by the County for its protection shall not be construed to preclude the County from exercising any other or further legal or equitable right to protect its interest.

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in cursive script, appearing to read "Robert D. Minnato", is written over a dotted line.

COUNTY ATTORNEY