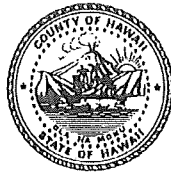


Harry Kim
Mayor

Roy Takemoto
Managing Director



William A. Kucharski
Director

Diane A. Noda
Deputy Director

County of Hawai'i

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

345 Kekūanāo'a Street, Suite 41 · Hilo, Hawai'i 96720

Ph: (808) 961-8083 · Fax: (808) 961-8086

Email: cohdem@hawaiicounty.gov

July 8, 2020

Ms. Tia A. Cavender
Dig Deep Research, LLC.
1010 S. Joilet Street, Suite 207
Denver, CO 80012

Via email to: tia@qodiqdeep.com

SUBJECT: PROFESSIONAL SERVICES CONTRACT
CONTRACT NO.: c.008455
CONTRACT DATE: July 7, 2020
PROJECT TITLE: Provide Grant Writer Services to Perform Strategic Planning of Grant Seeking Opportunities for the County of Hawai'i, Department of Environmental Management, Wastewater Division

Enclosed for your files is a fully executed copy of the subject document. The certification as to the availability of funds to cover this contract is enclosed thereon.

You are hereby authorized and instructed to proceed with the work called for under this contract, and to complete it pursuant to the terms of the contract, exclusive of review time as may be required by the County and other agencies.

Lastly, you are reminded that your Certificate of Insurance shall be current and valid throughout the duration of the project.

- **Commercial Liability on file expires:** **3/11/2021**
- **Automobile Liability on file expires:** **3/11/2021**

If you have any questions during the course of this project, please contact Dora Beck, P.E., Wastewater Division Chief at (808) 961-8513 or via email to Dora.Beck@hawaiicounty.gov.

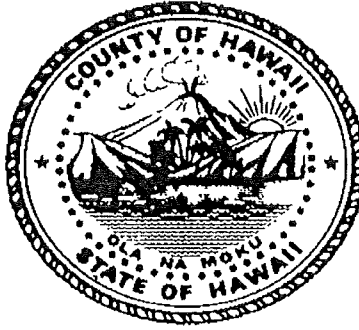
Sincerely,



William A. Kucharski
DIRECTOR

Enclosures

cc: Dora Beck
Finance



COUNTY OF HAWAII
CERTIFICATION OF AVAILABILITY OF FUNDS

I hereby certify that on the date of filing of this contract with the Director of Finance, there remains an unexpended amount of

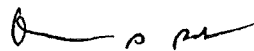
\$ **54,925.00** **030.631.5631.02.115**

sufficient to cover the obligation of the County of Hawaii under this contract in fiscal year 2019-2020.

Contract Title: **Grant writer services to perform strategic planning of grant seeking opportunities for the DEM Wastewater Division**

Vendor: **Dig Deep Research, LLC**

Contract No: **C.008455**



Director of Finance

Date: June 29, 2020

CONTRACT

THIS AGREEMENT is made and entered into as of this 7th day of July, 2020, by and between the COUNTY OF HAWAI'I, a municipal corporation duly organized and existing under the laws of the State of Hawai'i, whose business address is 25 Aupuni Street, Hilo, Hawai'i 96720, hereinafter called the "COUNTY," and DIG DEEP RESEARCH, LLC., a corporation, organized under the laws of the State of Colorado, whose business address is 1010 S. Joliet Street, Suite 207, Denver, Colorado, 80012, hereinafter referred to as the "CONSULTANT."

WITNESSETH:

WHEREAS, the COUNTY wishes to obtain the services of the CONSULTANT to render all the necessary professional community planning services for grant writer required to perform strategic planning of grant seeking for the County of Hawai'i, Department of Environmental Management, Wastewater Division, hereinafter referred to as the "PROJECT"; and

WHEREAS, the CONSULTANT is qualified, ready, willing and able to provide such services; and

WHEREAS, the COUNTY and the CONSULTANT have detailed the scope of work to be performed by the CONSULTANT on the PROJECT in a separate attachment entitled "EXHIBIT A - SCOPE OF WORK", a copy of which is attached hereto;

NOW, THEREFORE, the COUNTY and the CONSULTANT, in consideration of the mutual promises hereinafter set forth, hereby agree as follows:

1. The CONSULTANT shall perform all of the services required for the PROJECT in accordance with the General Terms and Conditions for Consultant Service Contracts dated October 09, 2019, attached hereto and hereinafter referred to as the "GENERAL TERMS & CONDITIONS."
2. The compensation for the work under "EXHIBIT B - FEE SUMMARY", subject to the GENERAL TERMS & CONDITIONS, shall consist of a fee not to exceed FIFTY-FOUR THOUSAND NINE-HUNDRED TWENTY-FIVE AND NO/ 100 DOLLARS (\$54,925.00), inclusive of all taxes for the CONSULTANT except in the case of a contract amendment increasing or decreasing the scope of work.
3. The work under "EXHIBIT A - SCOPE OF WORK" on this AGREEMENT shall be completed within the time periods established in "EXHIBIT C – SCHEDULE OF WORK" and shall

commence after the COUNTY has given the official written notice to proceed, exclusive of review time as may be required by the COUNTY and other agencies.

4. Any additional work that may be required shall be for Professional Services, as defined under Hawai'i Revised Statutes Section 103d-104, Definitions. The CONSULTANT shall submit a detailed scope of work, fee estimate, and project schedule for all additional work to be done. Authorization for the additional work shall be provided via written Task Order(s). All Task Orders issued shall be incorporated into the AGREEMENT by Supplemental Agreement. Supplemental Agreements shall be executed periodically after Task Orders are issued, but prior to contract close out.

5. That liquidated damages for failure to perform the work called for under Task No's 1 through 3 of EXHIBIT A- SCOPE OR WORK within the time fixed or any extension thereof exclusive of review time or any delays beyond the control of the Consultant shall be ONE HUNDRED FIFTY DOLLARS (\$150.00) per calendar day. Project schedule and completion dates shall be specified under EXHIBIT A herein; and

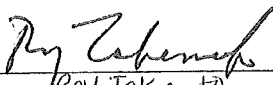
6. If a disagreement concerning this AGREEMENT or CONSULTANT'S work on the PROJECT arises which the parties cannot settle pursuant to the dispute resolution clause of the GENERAL TERMS & CONDITIONS appended hereto and incorporated by reference herein, the parties agree that no action or proceeding involving this AGREEMENT or CONSULTANT'S work on the PROJECT shall be commenced by either party except in the Circuit or District Courts of the Third Circuit, State of Hawai'i, nor shall any action commenced in such court be removed or transferred to any other state or federal court; and

7. A signed copy of the AGREEMENT and any Supplement Agreement may be executed and transmitted to any party by facsimile, electronic mail ("email") or other means of electronic transmission and shall be deemed to be, and utilized in all respects as, an original, wet-inked manually executed document.

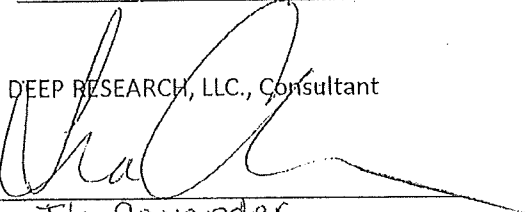
8. This AGREEMENT may be executed in counterparts, each of which shall be deemed to be an original copy of this AGREEMENT, and all of which, when taken together, will be deemed to constitute one and the same AGREEMENT. Signatures of the parties transmitted by facsimile or other electronic means shall be deemed to be their original signatures.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the day and year first above written.

COUNTY OF HAWAI'I

By 
Roy Takemoto
Its Managing Director

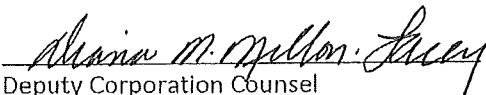
DIG DEEP RESEARCH, LLC., Consultant

By 
Tia Cavender
Its CEO & Founder

RECOMMEND APPROVAL:


WILLIAM A. KUCHARSKI, Director
Department of Environmental Management

APPROVED AS TO FORM AND LEGALITY:


Deputy Corporation Counsel
County of Hawai'i

DESIGNATED REPRESENTATIVE
for COUNTY OF HAWAI'I:
Name: Dora Beck, P.E.
Title: Wastewater Division Chief
Telephone: (808) 961-8513
Email: Dora.Beck@hawaiiicounty.gov

DESIGNATED REPRESENTATIVE
for DIG DEEP RESEARCH, LLC.:
Name: Tia A. Cavender
Title: Chief Executive Officer
Telephone: (720) 785-4155
Email: tia@godigdeep.com

EXHIBIT A – SCOPE OF WORK

Services to be provided for advanced grant-seeking efforts for planned wastewater capital improvements, as described in the Consultant's Proposal dated May 14, 2020, attached hereto. Through its Strategic Planning Membership model, Dig Deep will help to guide and advance the County's grant-seeking efforts to pursue funds for wastewater capital improvements. The scope of work will include the following tasks, activities and deliverables:

Task 1: Assess Funding Potential and Identify Top Funding Prospects

- Coordinate and facilitate monthly planning sessions with County staff
- Canvass, identify and research government grants and low-interest loans intended to pay for the design and construction of wastewater infrastructure
- Track and monitor new, emerging and pending government grant opportunities
- Evaluate which priority projects have the best funding potential given the current, post-Covid funding landscape
- Determine which grants are relevant to the County's priorities, and alert County staff about upcoming deadlines
- Provide ad-hoc email and/or phone correspondence regarding grant-related matters so Division staff have a source for technical assistance
- Assess the potential impact of the COVID U.S. financial crisis on targeted funding sources and make planning recommendations

Task 2: Provide Technical Support for Title XVI Grant Administration

- Coordinate and facilitate a post-award kick-off meeting for County staff
- Help the County understand and be kept up to date with federal grant reporting requirements related to the USBR Title XVI Feasibility Grant
- Remind the County of upcoming deadlines and requirements
- Coordinate and facilitate technical assistance meetings with USBR Title XVI staff
- Keep USBR staff informed of County's plan to pursue additional Title XVI funds
- Compile information requested from the County and help assemble, prepare, and submit grant reporting documents to USBR

Task 3: Develop a Strategic Plan (specific to Title XVI and Other Grants Sources)

- Evaluate competitiveness, assets, and liabilities for the next phase of Title XVI funding
- Identify potential sources of non-federal matching funds and in-kind contributions
- Collect qualitative data (e.g., public data, key informant interviews) regarding future federal appropriations and funding sources
- Evaluate leverage potential and potential governmental relations activities
- Identify creative funding options for projects lacking funding options
- Devise a competitive pursuit strategy for USBR's Title XVI funding
- Provide project phasing recommendations for best funding potential
- On-going evaluation and notification of newly released funding programs

Assumptions:

The County is responsible for submitting grant proposals and application materials. Any decision the County makes not to submit a proposal for funding will not affect the terms of this contract.

Additional Tasks and Amendments:

Any additional services that are not a part of this Agreement, shall be undertaken by the Consultant only at the direction of the County by way of a written Task Order.

Any significant increase or decrease in the scope of work, or significant time delays beyond the control of the Consultant, shall be subject to a mutually agreed upon amendment to the fee proposal.

EXHIBIT B – FEE SUMMARY:

For the services outlined above, the County shall compensate the Consultant according to the terms and conditions of this Agreement. Compensation will be on a fixed fee basis, the fees as noted below do not include fees for travel expenses. The compensation schedule is outlined below:

Task 1:	Assess Funding Potential and Identify Top Funding Prospects	\$20,000
Task 2:	Provide Technical Support for Title XVI Grant Administration	\$16,650
Task 3:	Develop a Strategic Plan (Specific to Title XVI and Other Grant Sources)	\$18,675
	TOTAL	\$54,925

EXHIBIT C – SCHEDULE OF WORK:

Exclusive of review time as may be required by the County and other agencies, significant changes, or other delays beyond the control of the Consultant, all work as described in the above Exhibit A, shall be completed within 365 days upon the issuance of the Notice to Proceed.

Deliverables and Timeline for Task 1

- Top Prospects List – two working versions of the Top Prospects List (V1 and V2), including recommendations about which grant and loan programs to pursue next. Version 1 is scheduled to be completed by September 15, 2020, and Version 2 by January 15, 2021.
- Monthly planning meetings (by phone or video) with Dig Deep strategist team. Meetings will start in June 2020 and will continue through May 2021.

Deliverables and Timeline for Task 2

- Completed progress reports for USBR Title XVI feasibility study (up to two reports). Timeline for preparing progress reports is dependent upon the reporting schedule defined in the final grant agreement. Progress reports will be prepared for County review within fifteen (15) calendar days prior to the submittal due date.

Deliverables and Timeline for Task 3

- Strategic Funding Plan (V1 and V2) for USBR Title XVI Funding and Other Government Funding Sources. Version 1 is scheduled to be completed by October 15, 2020, with Version 2 scheduled for completion by February 15, 2021.



SCOPE OF WORK FYE2021 STRATEGIC PLANNING MEMBERSHIP COUNTY OF HAWAI'I | DEPARTMENT OF ENVIRONMENTAL MANAGEMENT | WASTEWATER DIVISION

May 14, 2020

BACKGROUND

The County of Hawai'i (County) has asked Dig Deep Research, LLC (Dig Deep) to provide professional services in FY2021 to advance grant-seeking efforts for planned wastewater capital improvements. The following Scope of Work describes the activities, schedule, and price estimate for services in FYE2021. The proposed scope of work is intended to optimize the County's current opportunity to raise federal and state funding. For example, through the USBR WaterSMART Title XVI Water Reclamation and Reuse Program, the County can compete for millions in federal funding to help support the design and construction of wastewater recycling upgrades for the Kealahou Wastewater Treatment Plant.

APPROACH

Through its Strategic Planning Membership model, Dig Deep will help guide and advance the County's grant-seeking efforts to pursue funds for wastewater capital improvements. The proposed Membership will include the following tasks, activities and deliverables.

Task 1. Assess Funding Potential and Identify Top Funding Prospects

- ↓ Coordinate and facilitate monthly planning sessions with County staff
- ↓ Canvass, identify and research government grants and low-interest loans intended to pay for the design and construction of wastewater infrastructure
- ↓ Track and monitor new, emerging and pending government grant opportunities
- ↓ Evaluate which priority projects have the best funding potential given the current, post-Covid funding landscape
- ↓ Determine which grants are relevant to the County's priorities, and alert County staff about upcoming deadlines
- ↓ Provide ad-hoc email and/or phone correspondence regarding grant-related matters so Division staff have a source for technical assistance



- ↓ Assess the potential impact of the COVID U.S. financial crisis on targeted funding sources and make planning recommendations

Deliverables and Timeline for Task 1

- ↓ Top Prospects List - two working versions of the Top Prospects List (V1 and V2), including recommendations about which grant and loan programs to pursue next. Version 1 is scheduled to be completed by 9/15/2020, and Version 2 by 1/15/2021.
- ↓ Monthly planning meetings (by phone or video) with Dig Deep strategist team. Meetings will start in June 2020, and will continue through May 2021.

Task 2. Provide technical support for Title XVI grant administration

- ↓ Coordinate and facilitate a post-award kick-off meeting for County staff
- ↓ Help the County understand and be kept up-to-date with federal grant reporting requirements related to the USBR Title XVI Feasibility Grant
- ↓ Remind the County of upcoming deadlines and requirements
- ↓ Coordinate and facilitate technical assistance meetings with USBR Title XVI staff
- ↓ Keep USBR staff informed of County's plan to pursue additional Title XVI funds
- ↓ Compile information requested from the County and help assemble, prepare, and submit grant reporting documents to USBR

Deliverables and Timeline for Task 2

- ↓ Completed progress reports for USBR Title XVI feasibility study (up to two reports). Timeline for preparing progress reports is dependent upon the reporting schedule defined in the final grant agreement. Progress reports will be prepared for County review at least 15 (fifteen calendar days) prior to the submittal due date.

Task 3. Develop a Strategic Plan (specific to Title XVI and other grant sources)

- ↓ Evaluate competitiveness, assets, and liabilities for the next phase of Title XVI funding
- ↓ Identify potential sources of non-federal matching funds and in-kind contributions
- ↓ Collect qualitative data (e.g., public data, key informant interviews) regarding future federal appropriations and funding sources



- ↓ Evaluate leverage potential and potential governmental relations activities
- ↓ Identify creative funding options for projects lacking funding options
- ↓ Devise a competitive pursuit strategy for USBR's Title XVI funding
- ↓ Provide project phasing recommendations for best funding potential
- ↓ On-going evaluation and notification of newly-released funding programs

Deliverables and Timeline for Task 3

- ↓ Strategic Funding Plan (V1 and V2) for USBR Title XVI Funding and Other Government Funding Sources. Version 1 is scheduled to be completed by 10/15/2020, with Version 2 scheduled for 2/15/2021.

Optional Task. Prepare a government grant application for a wastewater project
Based upon results of Task 1, the County might decide to pursue one or more of the Top Funding Prospects in FYE2021. In those cases, Dig Deep will provide a grant-specific scope of work for the County to consider adding to its membership contract. Fees for grant writing services varies significantly based upon type (federal / state), proposal requirements, project scope, and amount of time before deadline. Deliverables for grant writing services typically include the preparation of grant application materials, including application forms, grant narrative, budget materials, letters of support, etc.

TERMS

The membership activities described above will occur for 1 year (365 calendar days) upon issuance of the NTP. During the one-year membership period, additional grant writing tasks may be authorized as they are evaluated and recommended in Task 1.

Price to complete all three tasks is \$54,925, which includes fees of: \$20,000 for Task 1; \$16,250 for Task 2; and \$18,675 for Task 3. Price does not include fees for travel expenses or Optional grant-writing task orders. Invoices will be submitted on a monthly basis for work completed during each invoicing period.



ASSUMPTIONS

The County is responsible for submitting grant proposals and application materials. Any decision the County makes not to submit a proposal for funding will not affect the terms of this contract. This scope must be authorized by 5/31/20 to guarantee services starting 6/1/20.

APPROVAL

Both parties agree to the provisions outlined in this scope of work.

A handwritten signature in blue ink, appearing to read "Tia Cavender", written over a horizontal line.

Tia A. Cavender
CEO

Date: May 14, 2020

A handwritten signature in blue ink, appearing to read "William A. Kucharski", written over a horizontal line.

William A. Kucharski
Director, Dept of Environmental Mgmt

ite:

COUNTY OF HAWAII,
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
GENERAL TERMS AND CONDITIONS
for
CONSULTANT SERVICES CONTRACTS
October 09, 2019

SECTION 1 - DEFINITIONS

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

- 1.1 CONSTRUCTION MANAGEMENT SERVICES. The endeavor to provide inspection services as an authorized representative of the Director.
- 1.2 CONSULTANT. Any individual, partnership, firm, corporation or joint venture engaged by the County to perform the services under the contract.
- 1.3 CONTRACT. The written agreement covering the performance of the services required for the project by the consultant. It shall include these general terms and conditions, and the special provisions. It shall also include all modifications of the contract by supplemental agreements thereto in writing and written orders of the Mayor and Director.
- 1.4 COUNTY. The County of Hawaii, State of Hawaii.
- 1.5 DESIGNS AND PLANS. Any and all designs, plans, construction drawings, specifications, cost estimates, work schedules, proposals, studies, reports and other items.
- 1.6 DIRECTOR. The Director of Environmental Management of the County of Hawaii, Department of Environmental Management, directly or through an assistant or representative.
- 1.7 ENGINEER. The Director of Public Works of the County of Hawaii, Department of Public Works, directly or through an assistant or representative.
- 1.8 INSPECTION. Visual observation of materials, equipment, or construction work for the purpose of ascertaining that the work is in substantial conformance with the contract documents and with the design intent. Such inspection shall not be relied upon by others as acceptance of the work, nor shall it be construed to relieve the Contractor in any way from his obligations and responsibilities under the construction contract.
- 1.9 MAYOR. The Mayor of the County of Hawaii.
- 1.10 SRF. State Revolving Fund.

SECTION 2 - AWARD AND EXECUTION OF CONTRACT

2.1 AWARD OF CONTRACT: The CONSULTANT, upon being selected to render certain professional services for the project, will be notified of his commission by the DIRECTOR. Said notice shall not be construed to be authorization to proceed with performance of services under the contract.

Any services performed by the CONSULTANT prior to the date indicated in the notice to proceed from the DIRECTOR shall be at his own risk.

2.2 EXECUTION OF CONTRACT: Prior to the drafting of the contract, discussions will be held between the parties relative to the extent of the services to be performed by the CONSULTANT and other pertinent matters. Based on said discussions, the COUNTY will draft the contract and submit the same to the CONSULTANT for review and signature. If the CONSULTANT is an individual, or partnership, the CONSULTANT shall sign the contract in the office of the DIRECTOR or before a notary public. If the CONSULTANT is a corporation, the CONSULTANT shall cause the contract to be signed before a notary public by an officer authorized to do so and shall affix to the contract its corporate certificate, resolution or other instrument vesting such officer with authority to sign the contract on its behalf. The signed contract shall be returned to the COUNTY for signature and further processing.

2.3 TAX CLEARANCES/COMPLIANCE WITH LAWS:

A. In accordance with Section 103-53, Hawaii Revised Statutes (HRS), tax clearances from the State Director of Taxation and the Internal Revenue Service to the effect that due tax returns have been filed and all taxes, penalties and interest have been paid are prerequisites to entering into the contract and to receipt of final payment, except as otherwise provided by rule or statute. Progress payments are subject to statutory assignment to satisfy delinquent taxes, interest and penalties.

B. Consultant is also required to furnish proof of compliance with the requirements of Section 3-122-112, Hawaii Administrative Rules (HAR):

- a. Chapter 237, tax clearance;
- b. Chapter 383, unemployment insurance;
- c. Chapter 386, workers' compensation;
- d. Chapter 392, temporary disability insurance;
- e. Chapter 393, prepaid health care; and
- f. One of the following:
 - (1) Be incorporated or organized under the laws of the State of (hereinafter referred to as a "Hawaii business"); or
 - (2) Be registered to do business in the State (hereinafter referred to as a "compliant non-Hawaii business").

C. Effective July 1, 2011, the Governor of Hawai'i signed Act 190 into law, which requires compliance documentation for awards of \$2,500.00 or more:

The responsibility of all Offerors doing business with the State or County are required to comply with all applicable statutes, administrative rules and procedures. State or County agencies must

verify compliance prior to award. Acceptable verification is through Hawai'i Compliance Express (HCE). Vendors wishing to do business with the State or County must register in HCE and be in compliance.

HCE is a one-stop online program where vendors verify and manage their compliance. Once a vendor is registered, HCE provides the following proof of compliance/ compliance documentation:

- Certificate of Good Standing (COGS) from the Department of Commerce and Consumer Affairs (DCCA) Business Registration Division
- Tax clearances (federal and state) from the Department of Taxation (DOTAX)
- Compliance with HRS Chapters 383 Hawai'i Employment Security Law (Unemployment Insurance), 386 (Worker's Compensation Law), 392 Temporary Disability Insurance and 393 Prepaid Healthcare Act, from the Department of Labor and Industrial Relations (DLIR)

There is a nominal fee to subscribe to HCE. Please note that it may take two or more weeks to establish a vendor account in HCE. For more information and to register, see <http://vendors.ehawaii.gov>.

D. The above certificates should be applied for and submitted to the Department at the time of award. If a valid certificate is not submitted on a timely basis for award of a contract, an offeror otherwise responsive and responsible may not receive the award.

2.4 CONTRACT NOT BINDING: The Contract shall not be binding or of any force until said contract has been fully and properly signed by all of the parties thereto, certified by the Director of Finance as to availability of funds in the amounts and for the purpose set forth therein and signed by the Mayor.

SECTION 3 - LEGAL RELATIONS AND RESPONSIBILITY

3.1 INDEPENDENT CONTRACTOR: In the performance of the services required under this Agreement, the CONSULTANT shall be an independent contractor with the authority 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, with proper and reasonable notice, to determine whether, in the opinion of the COUNTY, the work is being performed by the CONSULTANT in accordance with the provisions of this Agreement.

All persons hired or used by the CONSULTANT shall be the CONSULTANT'S agents and employees and the CONSULTANT shall be responsible for the accuracy, completeness, and adequacy of any and all work and services performed by its agents and employees.

Furthermore, the CONSULTANT intentionally, voluntarily, and knowingly assumes the sole and entire liability, if any such liability is determined to exist, to its agents and employees, or to third persons, for all loss, cost, damage, or injury to the extent caused by the negligence of CONSULTANT'S agents and employees in the course of their employment.

The performance of work under this Agreement alone shall not be construed as employment with the COUNTY and shall not entitle the CONSULTANT or the CONSULTANT'S agents, employees, to vacation, sick leave, retirement, or other benefits directly afforded COUNTY employees. The

CONSULTANT shall be responsible for payment of income, social security, and any other federal, state, or local taxes that it may be required to pay.

3.2 INDEMNIFICATION: The Consultant shall indemnify and hold harmless the County, its officers, agents and employees, from and against any and all actions, claims, suits, damages, losses, costs, and expenses to the extent arising out of the negligent, reckless, intentional or wrongful acts, errors or omissions of the Consultant, its officers, agents, employees or subcontractors occurring during or in connection with the performance of the Consultant's services under this contract, or to the extent arising out of the breach of this Contract by the Consultant. It is strictly understood that the County, its officers, agents and employees shall in no way be held liable for any damages, cause of action or suits resulting from the negligent, reckless, intentional or wrongful acts, errors, or omissions of the Consultant, its officers, agents, employees, or subcontractors. The Consultant shall reimburse the County and its officers, agents, and employees for their defense costs, including but not limited to attorney's fees and costs, to the extent attributable to the negligent, reckless intentional or wrongful acts or omissions of the Consultant, or its subcontractors and their officers, agents, and employees.

3.3 LIABILITY INSURANCE: The Consultant shall secure proof of insurance coverage which names the County of Hawai'i as additionally insured, for the duration of the agreement, in the following levels of coverage and amounts:

- Professional Liability:
 - \$1,000,000 Per Claim/ Wrongful Act
 - \$1,000,000 Annual Aggregate Limit
- Commercial General Liability Insurance:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/ Completed Operations Aggregate
 - \$1,000,000 Personal and Advertising Injury
- Automotive Liability Insurance:
 - Automobile Liability limits of not less than \$1,000,000 for bodily injury and property damage, in combined or equivalent split limits, for each single accident
- Workers' Compensation & Employers' Liability:
 - Workers' Compensation: Statutory Limits
 - Employers' Liability: Each Accident: \$1,000,000
 - Employers' Liability: Disease – Each Employee: \$1,000,000
 - Employers' Liability: Disease Policy Limit: \$1,000,000

The Consultant shall file with the Department of Environmental Management copies of a certificate of insurance showing it has in full force and effect the required insurance. The Consultant shall give the County thirty (30) days' notice of any cancellation in the policy."

3.4 NONDISCRIMINATION IN COUNTY CONTRACTS:

A. Pursuant to Executive Order No. 142, County of Hawaii, dated February 11, 2005, during the performance of this contract, the contractor agrees as follows:

- 1) The contractor shall comply with all requirements set forth in Federal and State laws and regulations relative to Title VI of the Civil Rights Act of 1964, as amended, which provide for non-discrimination in Federally assisted programs.
- 2) The contractor shall not discriminate against any employee or applicant for employment because of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state and federal law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The contractor agrees to post in conspicuous places notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
- 3) The contractor shall in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law.
- 4) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled or suspended in whole or in part and the contractor may be declared ineligible for further County contracts until such time that the contractor by satisfactory evidence, in good faith, ceases such discriminatory practices or procedures.
- 5) The contractor who subcontracts any portion of the contract shall assure the County that such subcontractor shall abide by the nondiscrimination provisions stated herein and agrees that any subcontractor who is found in violation of such provisions shall subject the principal contractor's contract with the County to be terminated or suspended pursuant to Section (4) above.
- 6) The County may direct any bidder, prospective contractor, or subcontractor to submit a statement in writing signed by an authorized officer, agent, or employee of the contracting party that the signer's practices and policies do not discriminate on the grounds of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law, and that the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions stated herein.

3.5 LAWS & REGULATIONS: The CONSULTANT shall keep himself fully informed of all laws, ordinances, codes, rules and regulations, governmental changes and development plans, setback limitations, rights-of-way, and all changes thereto, which in any manner affect the contract and the performance thereof.

The CONSULTANT shall comply with all such present laws, ordinances, codes, rules, regulations, design standards and criteria, governmental general and development plans, set back limitations, rights-of-way, including the giving of all notice necessary and incident to the proper and lawful prosecution of the work, and all changes thereto. If any discrepancy or inconsistency is discovered between the contract

and any such law, ordinance, code, rule, regulation, design standard, design criterion, governmental general and development plans, setback limitation, rights-of-way, the CONSULTANT shall forthwith report the same in writing to the DIRECTOR.

3.6 SRF BOILERPLATE: When the Project is to be funded through the State Revolving Fund, the consultant shall comply with all federal regulations as listed in the "SRF Boilerplate" Federal Requirements for SRF Projects dated June 2018, or most current version as applicable "Cross-cutter" regulations which have been determined as applying to the SRF loan program.

3.7 H.A.R. 3-125 (CHAPTER 125) REQUIREMENTS:

A. The language contained in the following provisions of the Hawaii Administrative Rules, Title 3, Subtitle 11, Chapter 125, are adopted and included by reference:

- 1) §3-125-2 Change order to goods and services contracts;
- 2) §3-125-3 Modifications to goods and service contracts;
- 3) §3-125-5 Authorization for a stop work order for goods and services contracts;
- 4) §3-125-6 Stop work orders for goods and services contracts;
- 5) §3-125-8 Variations in quantities for definite quantity goods and services contracts;
- 6) §3-125-9 Variations in quantities for indefinite quantity goods and services contracts;
- 7) §3-125-12 Price adjustment for goods and services contracts;
- 8) §3-125-14 Novation or change of name;
- 9) §3-125-15 Claims based on a procurement officer's actions or omissions for goods and services contracts;
- 10) §3-125-16 Claims based on oral directives;
- 11) §3-125-17 Termination for default in goods and services contracts;
- 12) §3-125-19 Liquidated damages for goods and services contracts;
- 13) §3-125-21 Termination for convenience of goods and services contracts;
- 14) §3-125-23 Prompt payment by contractors to subcontractors; and
- 15) §3-125-24 Remedies.

B. In the event of conflict or omission between the language of this contract and the intent of Chapter 125, H.A.R., the contract shall not be void or voidable, but the intent of Chapter 125 shall prevail.

SECTION 4 - MODIFICATIONS

4.1 MODIFICATION OF CONTRACT: The COUNTY may at any time make such modifications in the contract, as it deems necessary and advisable. Such modifications shall be made by a supplemental agreement in writing or by a written order of the Mayor provided that modifications by such a written order shall be limited to modifications in the scope of services and provided further that modifications involving no reduction or increase in compensation of the CONSULTANT may be made by written order of the DIRECTOR.

Upon receipt of a written order, the CONSULTANT shall proceed with the modification as ordered. If the CONSULTANT does not agree with any of the terms or conditions of or with the amount of the reduction, increase in compensation provided for in the order, he shall file with the DIRECTOR 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 5.4. Failure to file such protest within the time specified shall constitute agreement on the part of the CONSULTANT with the terms, conditions and amount in the order.

In the event the CONSULTANT for reasons related to safety does not agree with and refuses to proceed with the modifications required by the COUNTY in the written order, the Mayor may allow the CONSULTANT to withdraw from the contract without breach, provided the CONSULTANT files with the Mayor a written protest setting his reasons in detail within ten (10) calendar days after receipt of the order. If withdrawal is allowed, the CONSULTANT shall be compensated in the same proportion of the compensation under the contract as the services performed bear to the services to be performed under the contract.

SECTION 5 - PERFORMANCE OF CONTRACT

5.1 **TIME**: Time is of the essence of the contract. Performance of the services under the contract shall begin on the commencement date designated in the notice to proceed and be completed within the number of calendar days specified.

5.2 **DELAY**: If any delay in the performance of the services under the contract occurs as a result of unforeseeable causes beyond the control and without fault or negligence of the CONSULTANT, 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, then the CONSULTANT shall be granted an extension of the time for performance corresponding to the delay. If as a result of the delay completion of performance within the extended time would cause undue hardship to the CONSULTANT, the DIRECTOR may, in his discretion, grant further extension of the time for performance. No extension of time, however, shall be granted unless a written application therefore stating in detail the cause or cause of delay is filed by the CONSULTANT with the DIRECTOR within ten (10) calendar days after commencement of the delay. The number of days of each extension of time shall be determined by the DIRECTOR. No such extension shall be deemed a waiver of the right of the COUNTY to require the completion of the services under the contract within the time required herein as so extended by the specific terms of such extension or extensions, nor a waiver of right to terminate the contract for any other or additional delay not covered by the specific terms of such extension or extensions.

5.3 **PROSECUTION OF THE WORK**: The CONSULTANT shall be available upon reasonable demand to discuss the progress of the services being performed under contract. All questions arising during the performance of the contract that must be resolved by the Mayor or DIRECTOR shall be brought to their immediate attention.

The CONSULTANT shall direct his work to relate appropriately to, and in accordance with, established and generally accepted engineering, planning and/or architectural design principles and practices in effect at the time that CONSULTANT'S professional services are rendered.

The CONSULTANT shall be responsible for the accuracy of all computations and completeness of all work.

All notes, including field notes, designs, drawings, tracings and other data produced in the performance of the contract shall be the property of the COUNTY.

The DIRECTOR shall have access, at all reasonable times, to all notes, designs, drawings, tracings or other technical data pertaining to the services being performed under the contract for the purpose of inspection and making copies of them. Upon completion of the services under the contract, any and all such notes, studies, designs, drawings, tracings or other technical data shall be delivered and

surrendered to the COUNTY on demand, provided that copies of notes, studies and other technical data may be delivered and surrendered instead of originals.

5.4 MEDIATION: At the option of, and in the sole discretion of the Director, any dispute, controversy or claim arising out of or in connection with the interpretation or performance of any term or condition of this Agreement or any breach or alleged breach of this Agreement, shall be submitted to and resolved by non-binding mediation by a neutral and independent mediator, who shall be selected by the parties by mutual agreement, or if the parties are unable to agree upon the selection of a mediator, then in accordance with the commercial arbitration rules of the American Arbitration Association. The mediation shall take place in the County of Hawaii, State of Hawaii. The cost of the mediator and other mediation costs shall be borne equally by the parties. The mediation process and the outcome of the mediation shall remain confidential to the maximum extent permissible by law. Notwithstanding the foregoing terms, the parties shall make every reasonable effort to resolve disputes, controversies or claims between themselves in a cooperative fashion prior to submitting a dispute to mediation.

5.5 SUBCONTRACTING OR ASSIGNMENT OF CONTRACT: The CONSULTANT shall not subcontract or assign all or any part of the services under the contract without the prior written consent of the DIRECTOR. Any consent by the COUNTY to subcontract, assign or otherwise dispose of any portion of the contract shall not be construed to relieve the CONSULTANT of any responsibility for the performance of the contract.

5.6 STANDARDS: All work related to wastewater projects shall be performed in conformance with the Design Standards of the Department of Wastewater Management, City and County of Honolulu. Where there are no established Standards, the CONSULTANT shall submit the proposed Standard(s) for approval.

5.7 OWNERSHIP OF DOCUMENTS: Upon completion, the CONSULTANT agrees to relinquish and furnish to the COUNTY all original tracings of any and all plans and stencils which hereafter shall become the property of the COUNTY.

SECTION 6 - SERVICES TO BE PERFORMED BY THE COUNTY

6.1 COOPERATION BY THE COUNTY: The COUNTY shall, without cost to the CONSULTANT, through the DIRECTOR, cooperate fully with the CONSULTANT and will promptly place at the disposal of the CONSULTANT all available pertinent information which the COUNTY may have in its possession. The County will certify to the accuracy of certain information in writing whenever it is possible to do so. The COUNTY does not represent that other information not certified as accurate is so and takes no responsibility therefore, and the CONSULTANT shall rely on such information at his own risk.

SECTION 7 - COMPENSATION

7.1 COMPENSATION: The CONSULTANT shall be paid the amount stated in the written agreement, less any reduction in compensation and plus any increase in compensation pursuant to subsection 7.4 as full compensation for the performance of the services under the contract.

7.2 ABANDONMENT OF THE PROJECT; DEATH OR DISABILITY OF CONSULTANT: In the event the COUNTY terminates the contract because it wishes to abandon, defer, restudy or revise the project, or in the event the CONSULTANT, in the case of an individual, dies or become physically or mentally disabled, the CONSULTANT or his estate shall be compensated in the same proportion of the compensation under the contract as the services performed bear to the services to be performed under the contract.

7.3 PROGRESS PAYMENTS: Prior to any progress payment authorization, the CONSULTANT shall submit, and the COUNTY shall approve a detailed schedule of values corresponding to the specific services to be performed. As long as the services of the CONSULTANT are being performed in a manner satisfactory to the COUNTY, the COUNTY shall pay the CONSULTANT monthly partial payments in amounts proportionate to the value of the services performed by the CONSULTANT as indicated in the schedule of values.

7.4 REDUCTION OR INCREASE IN COMPENSATION: The compensation of the CONSULTANT shall be reduced whenever modification of the contract pursuant to subsection 4.1 reduces the services to be performed by the CONSULTANT.

The compensation of the CONSULTANT shall be increased to reimburse him for increased costs to perform the services under contract if performance of the services was delayed for more than six months by an act or omission of the COUNTY. No such reimbursement, however, shall be made unless he files a written application therefore with the DIRECTOR within thirty (30) calendar days after termination of the delay. In addition, the compensation of the CONSULTANT shall be increased whenever modification of the contract pursuant to subsection 4.1 requires the CONSULTANT to perform services not required under the contract. For each such modification and each modification reducing the services to be performed by the CONSULTANT, the compensation of the CONSULTANT shall be increased or reduced in accordance with the supplemental agreement or if no supplemental agreement has been entered into, by an amount equal to the sum total of the following:

- a) Wages of employees actually engaged in the services required by the modification and the salary cost of principals when actually engaged in such services in the case of an increase in compensation or the wages of employees and the salary cost of principals who would have been engaged in the case of a reduction in compensation;
- b) One hundred fifty percent (150%) of (a) for all other overhead, including bonus allowances, cost of supplies used, cost of transportation within the State of Hawaii required for the project and profit; and
- c) Other direct costs, including the cost of transportation to and from destination outside of the County of Hawaii and long-distance telephone calls.
- d) The State of Hawaii General Excise Tax payable by the CONSULTANT on (a), (b) and (c).

7.5 ASSIGNMENT OF MONEY DUE OR PAYABLE: Assignment of money due or to become payable to the CONSULTANT under the contract shall not be valid without the prior written consent of the Mayor. The rights of the assignee to moneys due or to become due to the CONSULTANT shall be subject to subsection 8.4.

7.6 ACCEPTANCE AND FINAL PAYMENT: Final payment will be made only after the issuance of a notice of final approval and acceptance by the Mayor advising the CONSULTANT of the satisfactory fulfillment of the terms of the contract and receipt of a certificate from the Director of Taxation, as provided in Section 103-53, HRS, relating to prerequisite for final settlement of contracts.

Acceptance by the CONSULTANT of the final payment shall constitute payment in full for all services performed under the contract.

SECTION 8 - REMEDIES

8.1 RIGHT OF THE COUNTY TO TERMINATE: The COUNTY shall have the right to suspend performance of the services under the contract or terminate the contract in whole or in part at any time

by written notice to the CONSULTANT. Upon termination all data, plans, specifications, reports, estimates, summaries, completed work and work in progress and such other information and materials as may have been accumulated by the CONSULTANT in the performance of his services shall, in the manner and to the extent determined by the DIRECTOR, become the property of and be delivered to the COUNTY. If the termination is for reasons other than default of the CONSULTANT as provided in subsection 8.2, the CONSULTANT shall be compensated in accordance with subsection 7.2.

It is understood and agreed that any services to be provided in accordance with the terms of this contract may be terminated immediately, in whole or in part, upon a finding by the County that the services must be provided by public employees pursuant to Civil Service Laws or that such services will be discontinued. It is further understood, that should such a finding be made, the COUNTY will not be liable under this contract for any resulting damages, and such a termination will not be considered a breach of this agreement.

8.2 TERMINATION BECAUSE OF CONSULTANT'S DEFAULT: The COUNTY shall have the right to enter into a new contract with another CONSULTANT and pay a reasonable compensation for such services as may be necessary to properly complete the services under the contract if it terminates the same because the CONSULTANT:

- 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 personnel, equipment or materials or is making sufficient progress to ensure the completion of the contract with the time specified,
- d) fails to perform the contract in accordance with directions of the DIRECTOR,
- e) discontinues performance of the contract,
- f) fails to recommence performance of the contract within a reasonable time after service of a written order to do so if the performance has 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) calendar days,
- j) makes an assignment for the benefit of creditors,
- k) fails to pay for all labor, tools, materials and equipment,
- l) has abandoned the contract,
- m) or violates or fails to comply with any of the terms, covenants and conditions of the contract.

The fee of such other CONSULTANT shall be paid from said unexpended amount of the compensation under the contract. Should the compensation of such other CONSULTANT exceed such unexpended amount, the CONSULTANT shall reimburse the COUNTY for the difference as part of the damages caused by CONSULTANT'S default. The provisions of this subsection shall not apply if the CONSULTANT is an individual and the default is due to his death or mental or physical disability.

8.3 LIQUIDATED DAMAGES: The amount of damage to the COUNTY as a result of failure to complete performance of specified services under the contract within the time fixed or any extension thereof, exclusive of overhead expenses, being certain but difficult, it not impossible, to ascertain, the CONSULTANT agrees to pay the sum stated in the contract as liquidated damages, and not by way of penalty, for every day delay until the services are completed and accepted, or a reasonable time has expired for completion and acceptance of the services remaining to be performed.

8.4 AUTHORITY TO WITHHOLD MONEY DUE OR PAYABLE: The COUNTY may withhold such amount from the money due or to become payable under the contract to the CONSULTANT, or any assignee under subsection 7.5, as may be necessary to protect the COUNTY against liability or to satisfy the obligations of the CONSULTANT to the COUNTY and to employees, subcontractors and material men who have performed labor or furnished material and equipment under the contract and may make such payments from such amounts as may be necessary to discharge such obligations and protect the COUNTY.

8.5 DISPUTES (HAR § 3-126-31)

(1) All controversies between the County and the Consultant which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Procurement Officer in writing, within ninety (90) calendar days after a written request by the Consultant for a final decision concerning the controversy; provided that if the Procurement Officer does not issue a written decision within ninety (90) calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, the Consultant may proceed as if an adverse decision had been received

(2) The Procurement Officer shall immediately furnish a copy of the decision to the Consultant, by certified mail, return receipt requested, or by any other method that provided evidence of receipt.

(3) Any such decision shall be final and conclusive, unless fraudulent, or unless the Consultant brings an action seeking judicial review of the decision in a circuit court of the State within six (6) months from the date of the receipt of the decision.

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

8.6 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 interest.