

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