



UNIVERSITY
of HAWAII®
SYSTEM

Office of Procurement Management

TRANSMITTED VIA EMAIL

February 29, 2024

Mr. Zachary A. Smith, Ph.D.
Managing Partner
Witt/Kieffer Inc. dba Witt/Kieffer
2015 Spring Road, Suite 510
Oak Brook, Illinois 60523

Dear Mr. Smith:

Subject: Contract No. C240068

Transmitted herewith is your fully executed copy of Contract No. C240068 to Provide Executive Search Services for the University of Hawaii President for the Board of Regents, University of Hawaii, Honolulu, Hawaii.

Very truly yours,

A handwritten signature in black ink that reads "Karlee Hisashima".

Karlee Hisashima
Interim Director

Attachment

UNIVERSITY OF HAWAII
AGREEMENT FOR SERVICES

This Agreement, effective the 26 day of February, 2024, is entered into between the
into between the University of Hawaii (hereinafter "UNIVERSITY"), and Wit/Kieffer Inc.

(hereinafter "CONTRACTOR"), a corporation
(Insert "corporation," "partnership," "joint venture," "sole proprietorship," or other legal form of the Contractor.)
under the laws of the State of Delaware, whose business address and taxpayer identification
number are as follows: 2015 Spring Road, STE 510, Oak Brook, Illinois 60523, Federal Taxpayer ID
No. XX-XXX9320

RECITALS

- A. The UNIVERSITY is in need of the services described in this Agreement and its attachments.
- B. The UNIVERSITY desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.
- C. Money is available to fund this Agreement pursuant to:

- (1) SW 2269712 or
(Identify state sources)
- (2) _____ or
(Identify federal sources)
- (3) _____ or
(Identify other sources)

in the following amounts:

State	\$	<u>130,000.00 + 5,000.00 (indirect expenses)</u> <u>+ direct expenses (to be determined)</u>
Federal	\$	_____
Other	\$	_____

D. Pursuant to Section 304A -105, Hawaii'i Revised Statutes (HRS), the UNIVERSITY is authorized to enter into this Agreement.


- E. The procurement of services specified herein is subject to the following procedures:
- Competitive sealed bidding/proposals.
 - Sole source procurement.
 - Emergency procurement.
 - Exempt purchase, pursuant to APM Section A8.220, Exemption No. _____.
 - Other: Exempt procurement pursuant to approval of the President

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


1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the UNIVERSITY, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.
2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in good faith in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.
3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement in accordance with the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.
4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.
5. Notices. Any written notices required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the UNIVERSITY at the Office of Procurement Management, 1400 Lower Campus Road, Room 15, Honolulu, Hawaii 96822, or to the CONTRACTOR at the CONTRACTOR's address as indicated in the Agreement with a copy to contracts@wittkieffer.com. A notice shall be deemed to have been received by the recipient THREE (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the UNIVERSITY in writing of any change of address.
6. Other Terms and Conditions. The General Conditions and the Special Conditions (if any) set forth in Attachments 5 and 6, respectively, are hereby made a part of this Agreement. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, the UNIVERSITY and the CONTRACTOR have executed this Agreement effective as of the date first above written.

UNIVERSITY

By 
Karlee Hisashima, Interim Director
Office of Procurement Management

CONTRACTOR

By 
Title Chief Human Resources Officer

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

CONTRACTOR'S ACKNOWLEDGMENT

State of IL)
County of DuPage) SS.

On this 26 day of February, 2024, before me personally appeared Tiffany Morris, to me personally known, who being by me duly sworn, did say that he/she is the Chief Human Resources Officer of Witt/Kieffer Inc., the CONTRACTOR named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the CONTRACTOR, and acknowledges that he/she executed said instrument as the free act and deed of the CONTRACTOR.

Notary Public, Stefania Cosentino
My commission expires: 03/29/2026



SCOPE OF SERVICE

Pursuant to the University of Hawaii's Invitation to Submit Proposals (ISP) No. 24-7859 issued on January 22, 2024, and Contractor's proposal dated January 16, 2024, the Contractor shall provide the executive search services for the University of Hawaii President for the Office of the Board of Regents ("BOR"), University of Hawaii, Honolulu, Hawaii.

1. Statement of Work

A) Facilitation of a Board Review

Contractor shall facilitate a board review which shall include institutional strengths and challenges that includes an organizational assessment that defines what the institution needs now and will need in the years ahead with a focus on the following:

1. How the University compares to benchmark institutions;
2. The University's financial performance and outlook;
3. The strength of the University's fundraising efforts;
4. The University's progress towards stated strategic priorities; and
5. The University's organizational culture and morale.

The Contractor shall interview the BOR, and others as appropriate, to develop an understanding of the overall vision for and mission of the University and to get their perceptions about the qualities that the University President would need to possess. In addition, the company shall develop documents that provide information about the University System and the challenges facing, the opportunities for, and the expectations of the University President.

B) Organization of the Search Process

Develop a search calendar timeline and budget.

C) Assist in Developing a Position Profile

Work directly with the BOR to draft a position description for the University President that includes identifying the priority expectations of the University President in accordance with the final outcomes of the board review as set forth in Section 1A above.

D) Manage Nominations and Applications

Encourage and actively recruit applicants, nominees, and referrals (collectively the "candidates"), and prepare background materials, as needed, on these candidates for BOR review and consideration.

E) Communicate and Provide Consultation on Applicants (as appropriate)

Provide consultant services to the BOR to narrow the pool of candidates, and provide competitive market data such as lists of recent hires and salaries of university and college presidents or similar chief executive officer positions at higher education institutions, national studies on salaries covering executives at higher education institutions, etc. Prepare and present interim reports to the BOR.

During this phase, the company shall disclose to the BOR if any of the applicants/candidates are currently a client of the company.

F) Interview References and Perform Due-Diligence Checks

Review and screen all applications and nominations of candidates who meet the minimum qualifications. At a minimum, this should include the validation of all candidates' stated

credentials (i.e., curriculum vitae, etc.) for those invited to interviews. Present an overview of the qualifications and assets of recommended candidates.

G) Organize Candidate Interviews

Organize and develop and interview schedule for the BOR.

H) Develop Finalist Recommendations to the BOR

Provide the BOR with directed and nondirected reference reports on each of the finalists brought to the University for on-campus interviews, and, upon direction from the BOR, conduct background checks that include, but are not limited to, credit/financial report, criminal record, employment verifications, educational verifications, and professional license verification.

I) Provide Guidance on Transition

Provide guidance to the BOR and institution in the transition to a new University President.

2. Contractor's Approach

In accordance with Contractor's proposal, the Contractor's approach to providing the services specified in paragraph 1 above are as follows:

A) Phase 1 - Planning and Preparation

1. At the start of the search, Contractor shall work with the BOR to determine an agreed upon timeline and key deliverables.
2. Contractor will utilize the time to gain an overall perspective of the environment in which the next president will operate and shed light on any sensitive issues that might affect the recruitment strategy.
3. Contractor shall prepare a comprehensive leadership profile that articulates the collective vision, perspectives, and requisite qualifications identified by the BOR and other leaders.
4. As the search gets underway, Contractor will draw on the leadership profile and insights gained during our interactions with the University to convey a full and compelling sense of the position to prospective candidates.
5. Key Deliverables
 - Provide institutional needs analysis and general consultation.
 - Identify critical leadership competencies according to strategic priorities.
 - Develop a project communication plan and search timeline.
 - Develop leadership profile and facilitate BOR committee approval.
 - Propose a recruitment strategy based on UH's objectives.
 - Recommend and implement broad and targeted advertising strategy.

B) Phase 2 - Candidate Sourcing, Assessment and Stewardship

1. Contractor shall conduct original research for this search and curate a list of prospective candidates from its networks based on the information gathered during the planning and preparation phase.
2. Contractor shall conduct in-depth behavioral interviews with each promising candidate to assess the seriousness of interest and potential for success in the position.

3. Contractor shall evaluate all candidates in the same thoughtful, comprehensive manner, treating internal candidates with particular sensitivity.

4. Key Deliverables

- Maintain frequent communication with the BOR committee co-chairs as desired.
- Engage in proactive outreach to high-quality sources and desirable prospects.
- Acknowledge and process nominations and applications.
- Conduct comprehensive leadership history evaluations prior to presenting candidates.
- Deliver highly qualified candidates and corresponding materials to the BOR committee.

C) Phase 3 - Interview Preparation, Support and Coordination

1. Contractor shall guide the BOR as it narrows the candidate pool to a select group of individuals who merit additional consideration.
2. Contractor shall assist the BOR to prepare for and conduct candidate interviews, managing as many of the candidate interactions as you prefer.
3. Contractor shall provide feedback throughout the candidate interview process and ongoing guidance once finalists are selected.
4. The Contractor shall disclose to the BOR if any of the applicants/candidates are currently a client of the company.

5. Key Deliverables

- Facilitate BOR selection of candidates to interview.
- Draft tailored interview questions and share candidate review tools and methods.
- Fully support scheduling, logistics, and implementation of interviews with candidates.
- Facilitate BOR deliberations and selection of finalist candidates

D) Phase 4 - Candidate Due Diligence

1. Contractor shall take extensive measures to mitigate risks inherent in any search process. As part of its candidate due diligence process, Contractor shall perform the following:
 - a. Conduct sophisticated, FCRA-compliant referencing with multiple contacts;
 - b. Comprehensive media and public record reviews;
 - c. Verification of employment history and education credentials; and
 - d. Screening for prior allegations of harassment or discrimination.

The University is strongly encouraged to conduct credit, driver's license, and criminal background checks on the finalist(s). The Contractor may assist with this if desired by the BOR.

2. Key Deliverables

- Conduct in-depth referencing.
- Verify candidate credentials and employment.
- Conduct media checks and investigate additional public media sources.
- Screen for prior allegations of harassment or discrimination.
- Administer comprehensive assessments for finalist candidates if desired.

E) Phase 5 – Decision and Appointment

1. Contractor may assist with scheduling finalist interviews and provide guidance on campus visits and other activities important to candidates and their families. The University maintains complete authority in the selection of semi-finalists, finalists, and the candidate(s) of choice.
2. The Contractor can advise on terms, salary, benefits, and relocation based on its experience negotiating executive compensation packages. Contractor shall offer counsel to assist the University transition to new leadership.
3. Key Deliverables
 - Advise on terms, salary, benefits, and relocation.
 - Transition and onboarding support.
 - Counsel to support negotiation.
 - Support for closing the process.

F) Ensure a Fair and Equitable Search Process

Contractor shall ensure a fair and equitable search process by performing the following services:

- Leveraging Contractor's database as well as conducting original research;
- Encouraging the University to establish a diverse search committee and to encourage the committee to help identify diverse candidates through the University's own networks;
- Ensuring that the University's values of diversity, inclusion, and equity speak prominently through the position profile;
- Posting the position in culturally-specific advertising outlets and leveraging Contractor's DEI council and networks to identify and recruit a diverse candidate pool; and
- Researching talent at organizations that have had great success in retaining diverse staff and developing programs that strengthen awareness and inclusivity.

G) Ensure that Best Practices in Equitable Search

Contractor shall ensure that best practices in equitable search are highlighted and discussed throughout the President search by performing the following services:

- Sharing search metrics and other applicable data, such as the number of applicants, diversity statistics, demographic data, and more. Gender and ethnicity demographic information is voluntarily provided by candidates.
- Ensuring that workshops on implicit bias are conducted and that the BOR committee is supported in exercising best practices in inclusive search throughout the engagement.
- Arming BOR committee members with ways to speak up if they feel uncomfortable with any aspect of the process or BOR committee discussion.
- Providing detailed candidate summaries and appraisals. The BOR committee will have on-demand access to all other relevant and confidential candidate materials through the secure web portal that we establish for the search.

H) Commit to Diversity, Equity, and Inclusion

Contractor shall be committed to providing its diversity recruiting and client solutions to the University which are designed for organizations, teams, and individual executives to strengthen behaviors, practices, and processes. Utilizing its team, Contractor's approach shall center around culture, partnership and development.

I) Executive Assessment and Early Onboarding – Optional

Upon request by the BOR, the Contractor may offer selection assessment and post-hire assimilation and early onboarding services as follows:

1. Assessment

- A competency-based interview between each candidate and a leadership advisory consultant;
- A comprehensive set of online psychometric assessments;
- A debrief session between a leadership advisory consultant and the hiring authority to interpret assessments findings; and
- Tailored interview questions and strategies based on assessment findings, as desired.

2. Onboarding Support

- A NINETY (90) minute assessment feedback session with the placement prior to or at the commencement of selectee's employment;
- An alignment session with a leadership advisory consultant, the placement, and hiring authority THIRTY (30) days post-hire to ensure agreement of goals and to develop a strong partnership; and
- A ONE HUNDRED (100) day check-in meeting between the Contractor's search consultant, leadership advisory consultant, and the placement to provide continued guidance and support.

3. Completion of Services/Continuation of Services

Pursuant to the objective of the agreement, both parties agree that the search will be deemed as concluded upon successful approval and hiring of a candidate. In unusual circumstances, the search will be deemed as concluded upon agreement by both parties that all services have been rendered. However, search efforts may continue in accordance with the term of this contract under Attachment 2, Time of Performance, regarding extension or early termination and Attachment 3, Compensation and Payment Schedule, regarding reopening of the search for purposes of replacement.

TIME OF PERFORMANCE

The term of the contract shall commence upon execution of the contract and shall continue until successful approval and appointment of a candidate. The time of performance shall commence upon execution of the contract and shall be in accordance with the schedule set forth herein, subject to extension by mutual agreement in writing or early termination, as follows:

1. Planning and Preparation

A. Start-up Activities

Estimated Duration: Equivalent of one (1) to three (3) days.

Contractor shall engage the BOR committee, UH leadership, and others to understand the university's leadership needs and inform the leadership profile.

B. Development of Leadership Profile and Recruitment Strategy

Estimated Duration: Two (2) Weeks

Contractor to prepare a draft leadership profile and suggested recruitment strategy for BOR approval. The BOR committee will provide input, including but not limited to stakeholder feedback through the Presidential Search Survey Responses, County Community Forums, and Presidential Search Advisory Group. Contractor to attend and assist with the County Community Forums.

2. Candidate Sourcing Assessment and Stewardship

A. Recruitment and Candidate Evaluation

Estimated Duration: Eight (8) to ten (10) weeks

Contractor to engage in strategic national/global recruitment and sourcing, targeting potential candidates. Contractor reviews application materials and conducts screening to identify qualified and preferred candidates.

B. Candidate Review

Estimated Duration: Four (4) hours

Contractor to meet with the BOR to review candidates and identify semi-finalists for interviews.

3. Interview Preparation, Support and Coordination

A. Semi-finalist Interviews

Estimated Duration: Two (2) days

Prepare the BOR committee for first-round interviews and assists with the selection of finalists for second-round interviews. Contractor to verify education, credentials, and employment history.

B. Finalist Interviews

Estimated duration: One (1) day per candidate

Finalists meet with additional University constituents at every campus with support from the Contractor. Contractor to conduct in-depth references. Candidate of choice identified from this round of interviews and negotiations commence.

C. Finalist Selection and Negotiations

When the hiring authority is prepared to extend an offer, Contractor may advise and/or assist with negotiations.

4. Appointment

Search Conclusion

Estimated Duration: TBD.

Final candidate accepts offer and the appointment is announced. Contractor may assist with and support the transition.

The Contractor and the University shall work together to prepare a final schedule and specific timeline.

COMPENSATION AND PAYMENT SCHEDULE

The University agrees to compensate the Contractor for providing the services hereunder a total amount, including all applicable taxes, not to exceed ONE HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$130,000.00), plus FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) for administrative expenses, which amounts includes all applicable taxes, to be invoiced as follows:

- a. Upon execution of agreement..... \$48,333.33
and receipt by the University of a valid certificate of vendor compliance (A valid certificate of vendor compliance is required prior to execution of agreement and initial payment).
 This amount includes one-third of the professional fee and the fixed administrative expenses.
- b. THIRTY (30) days after execution of agreement \$43,333.33
 This amount includes one-third of the professional fee. Contractor may also include billing for direct (out-of-pocket) expenses.
- c. NINETY (90) days after execution of agreement \$43,333.34
 This amount includes one-third of the professional fee. Contractor may also include billing for direct (out-of-pocket) expenses.

A final invoice at the conclusion of the search may be submitted to adjust, as necessary, fees and expenses incurred and payments received. (Receipt by the University of a second valid certificate of vendor compliance is required prior to final payment.)

Contractor is responsible for proper invoicing to initiate payment.

In addition, the University shall reimburse the Contractor for expenses, which are to be invoiced monthly, incurred on the University's behalf in the performance of the services herein (Administrative Expenses). The Administrative Expenses may include but are not limited to, postage, communication charges, photocopying, and research and shall not exceed FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00). Direct expenses such as staff and candidate travel and accommodations, courier services, video conferencing, publications, education verification and outside printing shall be reimbursed on an actual cost basis, with the understanding that all direct expenses including travel expenses to and from Hawai'i and on the mainland or internationally to interact with the University, seek candidates and/or for candidate travel, shall be subject to the prior approval of the University. All direct expenses shall be invoiced separately.

NOTE: Any reimbursement due the Contractor or candidates for per diem, if applicable, and transportation expenses under this Agreement shall be consistent with the guidelines set forth below in Attachment 6, Special Conditions, paragraph 3, Travel Expense Reimbursement.

If there is a significant change in the scope of the search or the Contractor's agreed-upon role, the parties will negotiate a modification to this agreement with adjusted fees if appropriate.

If the services of the Contractor are terminated by the University for reasons other than default by the Contractor, the University will be charged only for the pro rata portion of the fee plus expenses incurred up to the date which the notice of termination is received by the Contractor. The pro rata portion of the fee shall be based upon the number of calendar days which have elapsed during the billing period prior to termination. Payment of the professional fees and expenses by the University is not contingent upon the hiring of any of the candidates presented by the Contractor.

If a candidate, evaluated and recommended by the Contractor, is hired, and the candidate ceases to be employed by the University within one year of their commencement of employment, Contractor will reopen the search for this position for purposes of replacing the individual for no additional professional fee or fees for data and technology

services. The University will be responsible only for direct reimbursable expenses and an indirect expense fee for the reopened search services. Indirect expense fees shall be negotiated between the Contractor and the University and is subject to approval by the University. This shall not apply to those situations where the placement departs due to organizational realignment, department restructuring, material changes in the position, death, and disability.

Executive Assessment and early onboarding services are optional services. In the event the University elects to utilize either of these services, the fees shall be \$5,000 for a single finalist, an additional \$4,000 for a second finalist candidate, and \$3,000 for each additional candidate.

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

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

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

On behalf of Witt/Kieffer Inc.

CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR (is) (is not) a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*

2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.

3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a UNIVERSITY employee or, in the case of the Legislature, by a legislator.

4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the UNIVERSITY within the preceding TWO (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.

5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past TWELVE (12) months, has been a UNIVERSITY employee, or in the case of the Legislature, a legislator.

6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, a) within the past TWELVE (12) months, served as a UNIVERSITY employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

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

DATED: February 26, 2024.
(Month/Day) (Year)

CONTRACTOR

By Siffany Morris
Title Chief Human Resources Officer

* Reminder to UNIVERSITY PROGRAM: If "is" is circled, YOUR PROGRAM is required, under Section 84-15, Hawai'i Revised Statutes, to file with the State Ethics Commission, TEN (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

UNIVERSITY OF HAWAII
GENERAL CONDITIONS FOR
AGREEMENTS FOR SERVICES

1. Coordination of Services by the UNIVERSITY. The UNIVERSITY shall coordinate the services to be provided by the CONTRACTOR in order to complete the Project. The CONTRACTOR shall maintain communications with the UNIVERSITY at all stages of the CONTRACTOR's work, and submit to the UNIVERSITY for resolution, any questions which may arise as to the performance of this Agreement.

2. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.

a. In the performance of services, or delivery of goods, or both, required under this Agreement, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Agreement; however, the UNIVERSITY shall have a general right to inspect work in progress to determine whether, in the UNIVERSITY's opinion, the services are being performed or the goods are being provided, or both, by the CONTRACTOR in compliance with this Agreement. It is understood that the UNIVERSITY does not agree to use the CONTRACTOR exclusively, except for specific assignments, and that the CONTRACTOR is free to contract, to provide services, or goods, or both to other individuals or entities while under contract with the UNIVERSITY.

b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Agreement, agents or employees of the UNIVERSITY for any purpose, and the CONTRACTOR, and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the UNIVERSITY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to UNIVERSITY employees.

c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of its performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR's employees or agents in the course of their employment.

d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.

e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawai'i, in accordance with Section 237-9, Hawai'i Revised Statutes, and shall comply with all requirements thereof. The CONTRACTOR shall be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under Sections 103-53 and 237-45, Hawai'i Revised Statutes, and paragraph 14 of these General Conditions, including but not limited to, obtaining a general excise tax license.

f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

3. Personnel Requirements.

a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.

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

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

5. Subcontracts and Assignments.

a. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of the UNIVERSITY. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by the Vice President for Budget and Finance/Chief Financial Officer of the University of Hawai'i, as provided in Section 40-58, Hawai'i Revised Statutes.

b. Recognition of a successor in interest. When in the best interest of the UNIVERSITY, a successor in interest may be recognized in an assignment agreement which the UNIVERSITY, the CONTRACTOR, and the assignee as transferee (hereinafter referred to as the "ASSIGNEE") shall agree that:

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

c. Change of name. When the CONTRACTOR requests to change the name in which the CONTRACTOR holds this Agreement with the UNIVERSITY, the UNIVERSITY shall, upon receipt of a document acceptable or satisfactory to the UNIVERSITY indicating such change of name (for example, as amendment to the CONTRACTOR's articles of incorporation), enter into an agreement with the CONTRACTOR to effect such a change of name. The agreement changing the CONTRACTOR's name shall specifically indicate that no other terms and conditions of this Agreement are thereby changed.

d. Reports. All change of name or novation agreements effecting changes of the CONTRACTOR's name or novations hereunder other than by the UNIVERSITY shall be reported to the UNIVERSITY within THIRTY (30) days of the date that the agreement becomes effective.

e. Actions affecting more than one department. Notwithstanding the provisions of subparagraphs 5a through 5d herein, when the CONTRACTOR holds agreements with more than one department of the UNIVERSITY, the novation or change of name agreements herein authorized shall be processed only through the Office of Procurement Management.

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

7. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR's performance of this Agreement.

8. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the UNIVERSITY, the State of Hawai'i, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the negligent acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

9. Modification of Agreement. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and the UNIVERSITY.

10. Confidentiality of Material.

a. All material given or made available to the CONTRACTOR, as well as all proceedings, deliberations, and any and all matters pertaining to this Agreement and the services rendered hereunder, shall be kept confidential by the CONTRACTOR and, unless required by law, shall not be disclosed to any individual or organization without the prior written approval of the UNIVERSITY.

b. All information, data, or other material provided by the CONTRACTOR to the UNIVERSITY shall be subject to the Uniform Information Practices Act, chapter 92F, Hawai'i Revised Statutes.

11. Ownership Rights. The UNIVERSITY shall have complete ownership of all reports, plans, evaluations, applications, resume data, and related material, both finished and unfinished, which are received, developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement. All such material shall be provided to the UNIVERSITY upon request and/or upon expiration or termination of this Agreement.

12. Publicity. The CONTRACTOR shall not refer to the UNIVERSITY, or any office, agency, or officer thereof, or to the services provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements (excluding the posting of advertisements for the position that is subject of the search), or other publicity of the CONTRACTOR. All media contacts to the CONTRACTOR about the Project or this Agreement shall be referred to the UNIVERSITY.

13. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be in accordance with SPECIAL CONDITION 3, Travel Expense Reimbursement.

14. Payment Procedures; Final Payment; Tax Clearance. All payments under this Agreement shall be made only upon submission by CONTRACTOR of invoices specifying the amount due and certifying that (i) services requested under the Agreement have been performed by CONTRACTOR according to the Agreement, or (ii) the goods have been accepted by the UNIVERSITY, or (iii) both. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, Hawai'i Revised Statutes. Further, all payments shall be made in accordance with and subject to chapter 40, Hawai'i Revised Statutes. Final payment under this Agreement shall be subject to Sections 103-53 and 237-45, Hawai'i Revised Statutes, which require a valid tax clearance, FORM A-6, from the State of Hawai'i, Department of Taxation, and the Internal Revenue Service (IRS), showing that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the CONTRACTOR have been paid.

15. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the UNIVERSITY may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in TEN (10) days or any longer time specified in writing by the UNIVERSITY, the UNIVERSITY may terminate the CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination, the UNIVERSITY may, if possible, procure similar goods or services, or both, in a manner and upon the terms deemed appropriate by the UNIVERSITY.

b. CONTRACTOR's duties. Notwithstanding termination of the Agreement and subject to any directions from the UNIVERSITY, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the UNIVERSITY has an interest.

c. Compensation. Payment for completed services or goods, or both, delivered to and accepted by the UNIVERSITY shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and UNIVERSITY.

d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the UNIVERSITY within FIFTEEN (15) days after the cause of the delay and the failure arises out of unforeseen causes such as: acts of God; acts of a public enemy; acts of the UNIVERSITY and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the services or goods, or both, to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the UNIVERSITY shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR's progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the UNIVERSITY under this Agreement. As used in this paragraph, the term 'subcontractor' means subcontractor at any tier.

e. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Agreement.

16. Termination for Convenience.

a. Termination. The UNIVERSITY may, when the interests of the UNIVERSITY so require, terminate this Agreement for the convenience of the UNIVERSITY. The UNIVERSITY shall give written notice of the termination to the CONTRACTOR specifying when termination becomes effective.

b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance except for payment of fees earned and expenses incurred prior to the date of termination, and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The UNIVERSITY may direct the CONTRACTOR to assign the CONTRACTOR's right, title, and interest under terminated orders or subcontracts to the UNIVERSITY.

c. Right to goods and work product. The UNIVERSITY may require the CONTRACTOR to transfer title and deliver to the UNIVERSITY in the manner and to the extent directed by the UNIVERSITY:

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

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

d. Compensation. The CONTRACTOR shall be entitled to the payment of fees and expenses pursuant to the termination of services as provided in Attachment 3, Compensation and Payment Schedule.

17. Federal Funds. If this Agreement is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Agreement to be payable from federal funds, the CONTRACTOR shall be paid only from such federal funds received from the federal government, and shall not be paid from any other funds.

18. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawai'i. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

19. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

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

21. Antitrust Claims. The UNIVERSITY and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to UNIVERSITY any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the UNIVERSITY under an escalation clause.

22. Equal Opportunity and Affirmative Action Certification. The Contractor (contractor or subcontractor) agrees that the equal opportunity clause prohibiting discrimination on the basis of race, color, religion, sex or national origin, and the affirmative action requirements of Executive Order 11246, as amended, and implementing regulations at 41 CFR 60 are incorporated by reference in each non-exempt contract, subcontract, or purchase order, which is presently existing or may be entered into hereafter, between the Contractor and the University of Hawaii. The Contractor agrees to perform the applicable obligations of the equal opportunity clauses, as amended, covering race, color, religion, sex or national origin, (41 CFR 60-1.4), protected veterans [41 CFR 60-300.5(a)] and individuals with disabilities [41 CFR 60-741.5(a)]. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance**

in employment qualified protected veterans and qualified individuals with disabilities. In addition, each contract, subcontract, or purchase order shall also prohibit discrimination on the basis of gender identity and expression, age, ancestry, citizenship, genetic information, marital status, breastfeeding, income assignment for child support, arrest and court record, sexual orientation, national guard absence, and domestic or sexual violence victim status as required by federal and state laws. The Contractor agrees to comply with 29 CFR Part 471, Appendix A to subpart A. The Contractor agrees to indemnify and hold harmless the University from any claims or demands with regard to the Contractor's compliance with these provisions.

SPECIAL CONDITIONS

1. Campaign Contributions by State and County Contractors Prohibited

Contractor agrees to comply with Section 11-355, HRS, which states that campaign contributions are prohibited from State and County government contractors during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract. Further information is available from the Campaign Spending Commission's Executive Director or its General Counsel at (808) 586-0285.

2. Travel Expense Reimbursement

The University shall reimburse the Contractor for reasonable and documented travel incurred and associated with being physically present in Hawaii and/or on-site at the University (On-site). Allowable expenses include:

1) Inter-island and/or Out-of-State Travel

Reimbursement for air transportation between Hawaii and between Hawaii and out-of-state locations shall not exceed the lesser of actual cost and coach class air fare.

2) Ground Transportation

Reimbursement for ground transportation costs shall not exceed the actual cost of renting and economy sized vehicle.

3) Subsistence Allowance

Unless prior written approval of the University is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall consist of either the federal per diem rate or a mutually agreed upon flat dollar amount not to exceed the federal per diem rate. If the Contractor's expenses for hotel and meals and incidental expenses exceeds the agreed upon rates, additional compensation will not be provided.

4) Other

a) The Contractor shall notify and obtain pre-approval from the University for any miscellaneous expenditures sought for reimbursement not covered by the paragraphs set forth above.

b) The University will not reimburse the Contractor for the purchase and/or consumption of alcoholic beverages, entertainment, and other personal expenses.

3. Indemnification

General Condition 8, Indemnification and Defense, is hereby deleted in its entirety and shall be replaced with the following:

8. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the UNIVERSITY, the State of Hawai'i, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all reasonable attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the negligent acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

4. Ownership Rights and Work Products

With respect to General Condition 11, Ownership Rights, it is understood and agreed that the Contractor's internal notes and work papers, and any candidate information shall remain the exclusive property of the Contractor.

5. Compensation for Termination for Default

General Condition 15, Termination for Default, paragraph c, Compensation, is hereby deleted in its entirety and shall be replaced with the following:

"c. Compensation. Payment for fees and expenses invoiced prior to the date of termination and expenses incurred but not yet invoiced at the prices set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and UNIVERSITY."

The remainder of paragraph 15 shall remain unchanged.

6. Dispute Resolution

In the event a dispute arises between the parties concerning any aspect of this Agreement, the parties agree to negotiate either face-to-face or via a video conferencing platform within twenty (20) days of receipt of a letter describing the nature of the dispute and referencing this provision of the Agreement. If a face-to-face meeting is held, the meeting will be held at a location at the University unless the parties mutually agree to meet at another place. In the event the matter is not resolved by negotiation within thirty (30) days of this initial negotiation meeting, the parties shall engage a mediator and attempt to mediate the dispute. The parties agree to try in good faith to settle the dispute by mediation under the mediation rules of an alternative dispute resolution firm acceptable to both parties, before resorting to litigation. The parties will equally share the costs of the mediator and the mediation process except that each party will be responsible for the costs of its own presentation to the mediator. If the dispute is not resolved by mediation within sixty (60) days of the initial mediation meeting or such further time as the parties may agree to or that the mediator deems is needed, any party may commence a legal action in the state circuit court in the City and County of Honolulu.