

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii

November 8, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Delegation of Authority to the Chairperson of the Board of Land and Natural Resources (Board) to Approve a Grant Agreement to Navatek, Ltd. to Survey Ocean Recreation Activities in the South Oahu Ocean Recreation Management Area to Identify Potential Safety/Liability Issues Emerging from New Trends in Water Sports Activity

REMARKS:

The Division of Boating and Ocean Recreation is requesting that the Board delegate authority to the Chairperson to approve a contract for goods and services to Navatek, Ltd. (Exhibit A).

The Twenty-seventh Legislature of the State of Hawaii approved a grant request submitted by Navatek, Ltd. to survey ocean recreation activities in the South Oahu Ocean Recreation Management Area to identify potential safety and liability issues emerging from new trends in water sports activities (Exhibit B).

The Governor has also informed Navatek, Ltd. that he will be releasing the operating funds as appropriated by Act 134, SLH 2013 (Exhibit C).

RECOMMENDATION:

1. That the Board of Land and Natural Resources authorize the Chairperson to sign the necessary documents pertaining to the specific contract subject to available funding, release of funds by the Governor, and approval as to form by the Attorney General's office.

Respectfully Submitted,



Edward R. Underwood
Administrator

Attachments: Exhibit A – Contract for Goods and Services
Exhibit B - Application for Grants and Subsidies
Exhibit C – Governor Abercrombie's letter releasing funds

APPROVED FOR SUBMITTAL



William J. Aila, Jr.
Chairperson



STATE OF HAWAII
CONTRACT FOR GOODS AND SERVICES
 (IN THE FOLLOWING CATEGORIES: EXEMPT; SMALL PURCHASE;
 SOLE SOURCE; OR EMERGENCY)

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between Department of Land and Natural Resources,
(Insert name of state department, agency, board or commission)
 State of Hawaii ("STATE"), by its Chairperson,
(Insert title of person signing for State)
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 1151 Punchbowl Street Honolulu, Hawaii 96813
and Navatek, Ltd.
 ("CONTRACTOR"), a Corporation
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
 under the laws of the State of Hawaii, whose business address and federal and state taxpayer identification numbers are as follows: 841 Bishop Street, Suite 1110 Honolulu, Hawaii 96813; 99-0178612; W20311820-01

RECITALS

A. The STATE is in need of the goods and services, or both, described in this Contract and its attachments. The CONTRACTOR is agreeable to providing the goods and services, or both, as the case may be.

B. This Contract is for (check one box):

(1) A procurement expenditure of public funds for goods or services, or both, that is otherwise exempt from public bidding as set forth in section 103D-102, Hawaii Revised Statutes ("HRS"), and chapter 3-120, Hawaii Administrative Rules ("HAR"); or

_____ ; or
 (2) A small purchase procurement of goods or services, or both, as set forth in section 103D-305, HRS, and subchapter 8, chapter 3-122, HAR; or

(3) A sole source procurement of goods or services, or both, as set forth in section 103D-306, HRS, and subchapter 9, chapter 3-122, HAR; or

(4) An emergency procurement of goods or services, or both, as set forth in section 103D-307, HRS, and subchapter 10, chapter 3-122, HAR.

C. Money is available to fund this Contract pursuant to:

(1) Act 134, SLH 2013, H8
(Identify state sources)

or (2) _____
(Identify federal sources)

or both, in the following amounts: State \$ \$237,500
 Federal \$ _____

D. Pursuant to Act 134, SLH 2013, the STATE
(Legal authority to enter into this Contract)

is authorized to enter into this Contract.

E. The agency's Chief Procurement Officer is Aaron Fujioka who has approved this procurement or is not required to approve this procurement.

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

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in Attachment-S1, which is made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed Two hundred thirty seven thousand, five hundred DOLLARS (\$ 237,500), including approved costs incurred and taxes, according to the Compensation and Payment Schedule set forth in Attachment-S2, which is made a part of this Contract.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR is required to provide or is not required to provide: a performance bond, a payment bond, a performance and payment bond in the amount of _____ DOLLARS (\$ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of _____ DOLLARS (\$ _____) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by any party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

(Signature)

William J. Aila, Jr.

(Print Name)

Chairperson, Board of Land and Natural Resources

(Print Title)

(Date)

CONTRACTOR

Navatek, Ltd.

(Name of Contractor)

(Signature)

Martin Kao

(Print Name)

President/CEO

(Print Title)

(Date)

CORPORATE SEAL

(If available)

APPROVED AS TO FORM:

Deputy Attorney General

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



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) SS.
_____ COUNTY OF _____)

On this _____ day of _____, _____ before me appeared
_____ and _____, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
_____ and _____ of
_____ the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said
instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____
My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit _____

Doc. Description: _____

(Notary Stamp or Seal)

Notary Signature _____ Date _____

NOTARY CERTIFICATION



STATE OF HAWAII
CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"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 per cent (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. (Section 84-3, HRS).

On behalf of _____, CONTRACTOR, the undersigned does declare 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. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii 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 STATE.

* **Reminder to Agency:** If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____



STATE OF HAWAII

SCOPE OF SERVICES

The grantee will provide the work as follows:

- a. Develop and establish a survey methodology and procedures to determine the current (2014) scope and degree of ocean sports activities being conducted in the South Oahu Ocean Recreation Management Area (ORMA).
- b. Conduct a survey of those activities.
- c. Compile the data and produce a report for the State of Hawaii which will allow it to determine whether current legislation, rules and regulations are adequate to protect the safety of ocean users, and minimize legal liability to the State of Hawaii in case of accidents or deaths resulting from using the ORMA.

The data outputs will include reporting on the following:

- Usage of ocean areas by craft/equipment type
- Usage of ocean areas by time of day
- Usage of ocean areas by distance out from shore
- Usage of ocean areas by weekday versus weekend with reference to holiday impacts

The outputs will be concise and clearly supported with intuitively readable chart graphics. Expected in the data outputs are the following measures of effectiveness and accomplishments:

- any major changes in what ocean sports and recreation activities are taking place in the ORMA
- whether usage changes in the ORMA have increased the risk of accidents and resulting liability to the State and other parties
- whether current legislative rules and regulation, and enforcement strategies need to be reviewed and updated to reflect these changes.

Detailed goals and objectives and project timeline are included in Appendix A.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

Grant funds will be dispersed according to the following schedule:

1. \$213,750 at the commencement of the grant.
2. Once the grant report has been received and reviewed, \$23,750 will be disbursed to the grantee.

This reflects the distribution of the grant amount of \$237,500.



STATE OF HAWAII
TIME OF PERFORMANCE

The grant will commence upon the encumbrance of funds and conclude no later than one year from the release of funds.



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE**

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)
William J. Aila, Jr.

(Print Name)
Chairperson

(Print Title)

(Date)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature)

(Print Name)

(Print Title, if designee of the Director of DHRD)

(Date)

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, IAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, IAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

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

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

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any 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 Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

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

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, 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 acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer 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 Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, IAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract 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 Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer 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 Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR 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 subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

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

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

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer 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 STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, IIRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, IIRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE 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 STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

c. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

CERTIFICATE OF VENDOR COMPLIANCE

This document presents the compliance status of the vendor identified below on the issue date with respect to certificates required from the Hawaii Department of Taxation (DOTAX), the Internal Revenue Service, the Hawaii Department of Labor and Industrial Relations (DLIR), and the Hawaii Department of Commerce and Consumer Affairs (DCCA).

Vendor Name: NAVATEK, LTD.

DBA/Trade Name: NAVATEK, LTD.

Issue Date: 10/15/2013

Status: Compliant

Hawaii Tax#: W20311820-01
 FEIN/SSN#: XX-XXX8612
 UI#: XXXXXX7926
 DCCA FILE#: 35711

Status of Compliance for this Vendor on issue date:

Form	Department(s)	Status
A-6	Hawaii Department of Taxation	Compliant
	Internal Revenue Service	Compliant
COGS	Hawaii Department of Commerce & Consumer Affairs	Compliant
LIR27	Hawaii Department of Labor & Industrial Relations	Compliant

Status Legend:

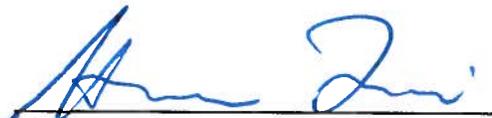
Status	Description
Exempt	The entity is exempt from this requirement
Compliant	The entity is compliant with this requirement or the entity is in agreement with agency and actively working towards compliance
Pending	The entity is compliant with DLIR requirement
Submitted	The entity has applied for the certificate but it is awaiting approval
Not Compliant	The entity is not in compliance with the requirement and should contact the issuing agency for more information

23 August 2013

RE:

Pursuant to 2013 Hawaii State Grant In Aid

I Steven Loui, represent that I am the Chairman of Navatek, Ltd., the firm named as the offeror herein; that Martin Kao signing this contractual instrument on behalf of Navatek, Ltd., is The President/CEO and Contracts Officer of said Corporation; that he has full authority to execute and sign said contractual instrument for and in behalf of said corporation by authority of its governing body; and is within the scope of its corporate powers.



(Signature)
Chairman

8/22/13

Date

House District 26

Senate District 13

**THE TWENTY-SEVENTH LEGISLATURE
APPLICATION FOR GRANTS & SUBSIDIES
CHAPTER 42F, HAWAII REVISED STATUTES**

Log No:

For Legislature's Use Only

Type of Grant or Subsidy Request:

GRANT REQUEST - OPERATING

GRANT REQUEST - CAPITAL

SUBSIDY REQUEST

"Grant" means an award of state funds by the legislature, by an appropriation to a specified recipient, to support the activities of the recipient and permit the community to benefit from those activities.

"Subsidy" means an award of state funds by the legislature, by an appropriation to a recipient specified in the appropriation, to reduce the costs incurred by the organization or individual in providing a service available to some or all members of the public.

"Recipient" means any organization or person receiving a grant or subsidy.

STATE DEPARTMENT OR AGENCY RELATED TO THIS REQUEST (LEAVE BLANK IF UNKNOWN): DLNR (DOBOR)

STATE PROGRAM I.D. NO. (LEAVE BLANK IF UNKNOWN): _____

1. APPLICANT INFORMATION:

Legal Name of Requesting Organization or Individual: Navatek Ltd.

Db:

Street Address: 841 Bishop St., Suite 1110

Mailing Address: 841 Bishop St., Suite 1110 Honolulu, HI 96813

2. CONTACT PERSON FOR MATTERS INVOLVING THIS APPLICATION:

Name ANN CHUNG

Title Director of Special Projects

Phone # 808-351-6000

Fax # 808-523-7668

e-mail achung@navatekltd.com

3. TYPE OF BUSINESS ENTITY:

NON PROFIT CORPORATION

FOR PROFIT CORPORATION

LIMITED LIABILITY COMPANY

SOLE PROPRIETORSHIP/INDIVIDUAL

6. DESCRIPTIVE TITLE OF APPLICANT'S REQUEST:

Survey of Ocean Recreation Activities in the South Oahu Ocean Recreation Management Area to Identify Potential Safety/Liability Issues Emerging from New Trends in Water Sports Activities

4. FEDERAL TAX ID #: 99-0178612

5. STATE TAX ID #: W20311820-0

7. AMOUNT OF STATE FUNDS REQUESTED:

FISCAL YEAR 2014: \$ 450,000

8. STATUS OF SERVICE DESCRIBED IN THIS REQUEST:

NEW SERVICE (PRESENTLY DOES NOT EXIST)

EXISTING SERVICE (PRESENTLY IN OPERATION)

SPECIFY THE AMOUNT BY SOURCES OF FUNDS AVAILABLE AT THE TIME OF THIS REQUEST:

STATE \$ _____

FEDERAL \$ _____

COUNTY \$ _____

PRIVATE/OTHER \$ _____

TYPE NAME & TITLE OF AUTHORIZED REPRESENTATIVE


AUTHORIZED SIGNATURE

MICHAEL SCHMICKER
NAME & TITLE

1-31-13
DATE SIGNED

I. Background and Summary

This section shall clearly and concisely summarize and highlight the contents of the request in such a way as to provide the State Legislature with a broad understanding of the request.

Include the following:

1. Applicant's background:

Navatek, Ltd. was founded in 1979 and operates out of offices in Honolulu, Hawaii with 49 employees. Navatek is a subsidiary of *kama'aina* company Pacific Marine, founded in 1944, with 450 employees. Parent company Pacific Marine also owns Pacific Shipyards International LLC, the State's largest commercial ship repair company.

For over 30 years, Navatek has professionally operated a fleet of advanced small craft in Hawaiian waters – including survey vessels capable of conducting sustained, at-sea observations and data collection. The company also employs a staff of local, certified, trained and U.S.C.G-licensed boat operators who are familiar with Hawaii waters, and ocean sports activities in those waters, regularly participating in those sports. This unique combination of available survey craft and skilled boat operators makes it possible for Navatek to conduct the proposed "on-water" survey safely, efficiently and effectively.

2. The goals and objectives related to the request

They are three:

- Develop and establish a survey methodology and procedures to determine the current (2014) scope and degree of ocean sports activities being conducted in the South Oahu Ocean Recreation Management Area.
- Conduct a survey of those activities
- Compile that data and produce a report for the State of Hawaii which will allow it to determine where current legislation, rules and regulations are adequate to protect the safety of ocean users, and minimize legal liability to the State of Hawaii in case of accidents or deaths resulting from using the South Oahu ORMA.

3. The public purpose and need to be served:

As the State's population grows, the public's usage of Hawaii's ocean waters is continually increasing. Tourism brings additional millions of people to play in Hawaii's waters, and the ocean recreation industry continues to develop and market new craft, vehicles and toys for ocean sports use. The waters become more and more crowded, and the new products create new risks. Traditional water sports like surfing, swimming, sailing, paddling a canoe, and fishing have been enjoyed for years. They now share the water with activities popularized in the last 2-3 decades such as; sailboards, scuba divers, high-speed jet skis, parasailers, and water sleds. Several new water sports activities have become extremely popular in recent years. These include Stand-Up Paddling (SUP), paddle board racing, extreme skin diving, and unlimited class outrigger canoe racing.

To better manage risks associated with ocean sports in Hawaii, the State of Hawaii has created an Ocean Recreation Management Plan (HRS 256) which 1) designates specific Ocean Recreation Management Areas (ORMA) on each island, and 2) lays down rules and regulations regarding the use of these areas by the public. Perhaps the most heavily used ORMA in the State is the South Oahu Ocean Recreation Management Area. This ORMA covers the heavily used and tourist-popular waters of Waikiki and Hanauma Bay, as well as seven other zones.

As usage has exploded, so have accidents (even deaths) along with costly lawsuits against individuals, corporations and the State of Hawaii (and eventually the taxpayer). "Lawsuits arising out of water sports and recreational liability issues have become quite common in our society. Plaintiffs generally claim that they should have been protected or warned of a hazard by the defendants." (Louie and Ching, *FDCC Quarterly* Summer 2006).

As the population using Hawaii's ocean waters increases, and new sport recreation activities are introduced, the danger grows that Hawaii's legislative rules and regulations no longer adequately cover the activities – and risks – found in the ORMAs.

Under this request, Navatek proposes to conduct an on-water survey of current ocean sports activities actually taking place in the waters of the South Oahu Ocean Recreation Management Area, in order to 1) determine the present scope and range of these activities 2) identify

emerging safety, usage conflicts and liability issues emerging from new trends in water sports activities.

During this survey, Navatek will be stationed on the water in the South Oahu ORMA. This will allow Navatek to provide, at no additional cost, two other additional benefits to the State of Hawaii during this 12 month survey. Navatek will 1) monitor the ORMA for sea-borne debris, including identifying and collecting samples of any debris from the Japan 2011 earthquake off Tohoku which may make it to Hawaii's shore, and 2) help the Coast Guard and DOBOR respond to any endangered swimmers and boaters operating in the ORMA.

4. Describe the target population to be served:

The target population to be served includes; Oahu residents and Oahu tourists using the nine zones in the South Oahu Ocean Recreational Management Area.

5. Describe the geographic coverage:

The nine zones in the South Oahu Ocean Recreational Management Area : Hanauma Bay Restricted Zone, Maunalua Bay Restricted Waters, Waialae-Kahala Restricted Areas; Diamond Head Restricted Area; Walkiki Ocean Waters Restricted Zones; South Shore Parasail Area; Kahakaaulana Islet Commercial Zone; Reef Runway Zone; Koko Head and Makapuu commercial high speed boating zone. Additionally, offshore areas beyond the seaward boundaries of the zones will be monitored for activity. The range of SUP, paddle board racer practice, and even extreme skin diving activity is perceived to be increasing further offshore.

APPENDIX 1

HRS Chapter 256

Subchapter 6:

“South Oahu Ocean Recreation Management Area”

SUBCHAPTER 6

SOUTH OAHU OCEAN RECREATION MANAGEMENT AREAS

§13-256-86 Definition. The "South Shore Oahu Ocean Recreation Management Area" means all ocean waters and navigable streams from Makapuu Point to the west boundary of the Honolulu International Airport Reef Runway, Oahu, Hawaii, extending three thousand feet seaward of the territorial sea baseline as shown on Exhibit "CC", dated August 15, 1988, located at the end of this subchapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-87 Hanauma Bay Restricted Zone. (a) The Hanauma Bay Restricted Zone means the area confined by the boundaries shown for said zone on Exhibit "DD", dated August 15, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark at Palea Point then by azimuth measured clockwise from True South, 23 degrees 15 minutes and 50 seconds for a distance of one thousand nine hundred forty-six feet to Paioluolu Point; then along the shoreline of Hanauma Bay to the point of beginning.

(b) Restriction: Hanauma Bay is designated a swimming and snorkeling zone. No watercraft of any description shall operate or moor in this zone, except a person (1) engaged in law enforcement, rescue or other operations essential to preserve life or property; (2) engaged in research or other activities pursuant to a permit issued by the department of land and natural resources. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-88 Maunalua Bay waters. (a) Maunalua Bay waters means the area encompassed by the

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boundaries shown on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the southern point on the shoreline of Kawaihoa Point, then by azimuth measured clockwise from True South, 107 degrees for a distance of seventeen thousand and eighty-five feet to the southwestern tip of Wailupe Peninsula, then along the shoreline of Maunalua Bay to the point of beginning.

(b) Commercial ocean recreation activities shall be restricted within Maunalua Bay waters as follows:

(1) No commercial operator shall operate a thrill craft, engage in parasailing, water sledding or commercial high speed boating, operate a motorized vessel towing a person engaged in parasailing, or operate a motor vessel towing a person engaged in water sledding during all weekends, and state or federal holidays.

(2) All commercial ocean recreation activities in Maunalua Bay waters are prohibited on Sunday, effective January 1, 1991.

(c) Zone A Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 325 degrees for a distance of two thousand three hundred twenty-five feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

(d) Zone B Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 330

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degrees for a distance of one thousand six hundred eighty feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

(e) Zone C Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 340 degrees for a distance of two thousand five hundred fifty feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

Zones A, B and C are designated commercial thrill craft operating zones. No commercial operator permittee shall operate more than six rental thrill craft within each designated area at any one time. No commercial thrill craft shall be operated within Zones A, B and C except between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Fridays. No commercial thrill craft shall be operated within Zones A, B and C on Saturdays, Sundays and state or federal holidays.

(f) Zone D Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 012 degrees for a distance of seven hundred fifty feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

Zone D is designated a recreational thrill craft operating zone for use by inexperienced operators only. Commercial thrill craft operations are prohibited.

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(g) Zone E Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone E are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South 076 degrees for a distance of four thousand one hundred feet from Buoy "1", then 076 degrees for a distance of eight thousand four hundred feet; 168 degrees for a distance of one thousand four hundred fifty-five feet; 259 degrees for a distance of eight thousand five hundred eighty feet; then in a straight line to the point of beginning.

Zone E is designated a recreational thrill craft zone. No person shall operate a commercial thrill craft within this area. Other vessels shall exercise caution when transiting this area. This zone shall be closed to all thrill craft operations during the whale season, from December 15 to May 15 of the following year.

(h) Zone F Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone F are as follows:

Beginning at a point in the water at Buoy "1", by azimuth measured clockwise from True South, then 157 degrees for a distance of one thousand nine hundred thirty-five feet; 092 degrees for a distance of one thousand nine hundred five feet; 085 degrees for a distance of three thousand three hundred feet; 075 degrees for a distance of four thousand two hundred eighteen feet; 347 degrees for a distance of two thousand four hundred feet; 259 degrees for a distance of eight thousand eight hundred eighty feet; 000 degrees for a distance of eight hundred eighty-five feet; then by a straight line to a point of beginning.

No person shall operate a vessel within this area at a speed in excess of slow-no-wake. This is a green sea turtle resting and foraging area.

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(i) Zone G Maunalua Bay Parasail Zone is the area encompassed by the boundaries shown of the zone on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries of Zone G are as follows:

Beginning at entrance buoy "1" to the Hawaii-Kai Marina and Maunalua Bay boat launching ramp, establishing the eastern boundary along the extended centerline of the Ku'i channel entrance; then by straight line to buoy R-2 off Diamond Head, establishing the western boundary.

Zone G Maunalua Bay Parasail Zone is designated for parasail operations. All operating parasail vessels shall remain seaward of the boundary line. No more than two commercial operating area use permits for parasailing operations shall be authorized for this zone. No permittee shall operate more than one vessel with a parasail aloft at any one time. No person shall operate within one thousand feet of any buoy when the parasail is aloft. All other vessels using this area shall exercise extreme caution. This zone, except for that portion which is encompassed by alternate parasail zone G1, shall be closed to parasail operations from January 6 to May 15 of each year.

(j) Zone G1 Maunalua Bay Alternate Parasail Zone is the area encompassed by the boundaries shown on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries of Zone G1 are as follows:

Beginning at a point on the the eastern boundary of Zone G at the intersection of the straight line following a line from Kawaihoa Point at Koko Head to buoy R-2 off Diamond Head, establishing the shoreward boundary; then at a point on the shoreward boundary intersected by a line on a bearing of 000 degrees to the Kahala Hilton Hotel establishing the western boundary.

Zone G1 Maunalua Bay Alternate Parasail Zone is that portion of parasail Zone G which is designated for parasail operations from January 6 to May 15 of each year. No permittee shall operate more than one

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parasail vessel within this zone during this period. No parasail vessel shall exceed the speed of 18 knots within this zone. All other vessels using this area shall exercise caution.

(k) Zone H Ingress-egress corridor means the area encompassed by the boundaries shown on Exhibit "HH", dated August 19, 1988, and located at the end of this subchapter. The boundaries of Zone H are as follows:

Beginning at a point at the shoreward western boundary of Maunalua Beach Park boat ramp; then by azimuth measured clockwise from True South, 120 degrees for a distance of seventy-five feet, 030 degrees for a distance of one hundred feet to a point in the water; 120 degrees for a distance of one hundred feet to a point in the water; 218 degrees for distance of one hundred feet to a point on land; then in a straight line to the point of beginning.

Zone H is designated for recreational thrill craft ingress-egress to the ocean waters of Maunalua Bay. No person shall operate or moor a vessel, surfboard, or sailboard within this area.

(l) Zone I means the area encompassed by the boundaries shown on Exhibit "HH", dated August 19, 1988, and located at the end of this subchapter. The boundaries of Zone I are as follows:

Beginning at a point in the water 270 degrees by azimuth measured clockwise from True South, at a distance of twenty-five feet from daybeacon R"2" of Ku'i channel; then 270 degrees for a distance of three hundred feet, 025 degrees for a distance of one thousand one hundred twenty-five feet; 090 degrees for a distance of three hundred feet; then in a straight line to the point of beginning.

Zone I is designated for recreational water skiing and commercial water sledding. Only one commercial operating area use permit shall be issued for this zone for safety purposes.

(m) Maunalua Bay, Ku'i Channel speed restrictions.

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- (1) The speed of any watercraft shall not exceed 10 knots when within the confines of the Ku'i channel as shown on Exhibit "GG" dated May 15, 1990, and described as follows:
Beginning at a line drawn between buoys R"2" and G"1A", then through each and every daybeacon in ascending order to daybeacons R"8" and G"9".
- (2) The speed of any watercraft shall not exceed 5 knots when within the confines of the Ku'i channel as shown on Exhibit "GG", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:
Beginning at a line drawn between buoys R"8" and G"9", then through each and every daybeacon and buoy in ascending order to the boundaries of Hawaii Kai Marina Bridge, May Way Bridge and Kuli'ou'ou Stream. [Eff 2/24/94] (Auth: HRS §§200-22, 200-23, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

§13-256-89 Waialae-Kahala Restricted Areas. (a)
The Waialae-Kahala Swimming Area A.

- (1) The Waialae-Kahala swimming area A means the area confined by the boundaries shown for said zone on Exhibit "II", dated August 19, 1988 located at the end of this subchapter. The boundaries are as follows:
Beginning at the low water mark at the southern tip of the Waialae Nui Stream groin, then by azimuth measured clockwise from True South; 205 degrees for a distance of five hundred fifty feet to a point in the water; then in a straight line to the southern tip of the rocky peninsula; then along the low water mark in a westerly direction to the point of beginning.
- (b) The Waialae-Kahala Swimming Area B.

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- (1) The Waialae-Kahala swimming area B means the area confined by the boundaries shown for said area on Exhibit "II", dated August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark at the southern tip of the rocky peninsula then by azimuth measured clockwise from True South; 340 degrees to the north tip of the islet; then along the low water mark on the eastern portion of the islet to the southeast tip; then in a straight line to the southern tip of the groin at the eastern boundary of the Kahala Hilton Hotel; then following the low water mark in a westerly direction to the point of beginning.

- (2) Restrictions. The Waialae-Kahala swimming areas A and B are designated for swimming and bathing and the use of water sports equipment. No person shall operate or moor a vessel, except as provided for in subsection (d), or surfboard, or sailboard within this area.

(c) Waialae-Kahala Ingress-Egress Corridor.

- (1) The Waialae-Kahala ingress-egress corridor means the area confined by the boundaries shown for said area on Exhibit "II", dated, August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline which is adjacent to the east side of the groin at Waialae Beach Park; then by azimuth measured clockwise from True South, 006 degrees to the seaward end of the groin and the boat channel; then 253 degrees for a distance of one hundred forty feet along the boat channel; then 186 degrees to the low water mark of the shore; then along the shoreline to the point of beginning.

- (2) Restrictions. The Waialae-Kahala ingress-egress corridor is designated for use by

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windsurfing and manually propelled water sports equipment.

- (d) Waialae-Kahala Beach Boat Channel.
- (1) The Waialae-Kahala beach boat channel means the area confined by the boundaries shown on Exhibit "II", dated, August 19, 1988 located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark at the southern tip of the Waialae Nui Stream groin, then by azimuth measured clockwise from True South, 205 degrees for a distance five hundred fifty feet, coincident with Swimming Area A boundary; then in a straight line to the low water mark at the south eastern tip of the rocky peninsula; then along the low water mark of the rocky peninsula and shoreline to a point one hundred twenty-five feet east of the rocky peninsula; then 343 degrees in a straight line to intersect Swimming Area B boundary; then along Swimming Area B boundary to the northern tip of the islet; then 160 degrees for a distance of four hundred twenty-five feet; then 025 degrees for a distance of four hundred seventy-five feet; then in a northwesterly direction to the point of beginning.
- (2) Restrictions. The Waialae-Kahala beach boat channel is designated for use by commercial vessels, operating under contract with the Kahala Hilton Hotel and holding a valid commercial use permit from the department. The operation of any other vessel is prohibited within this area. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-90 Diamond Head Restricted Area. (a)
The Diamond Head Restricted area means the area confined by the boundaries shown for said area on

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Exhibit "JJ", dated September 19, 1988, located at the end of this subchapter, the boundaries are as follows:

Beginning at a point at the low water mark of the shoreline on the western boundary of the Diamond Head Lighthouse; then by azimuth measured clockwise from True South, 345 degrees for a distance of two thousand eight hundred eighty feet; 253 degrees for a distance of two thousand two hundred fifty feet; then by a straight line to a point at the low water mark at the most eastern boundary of Diamond Head Beach Park; then along the low water mark in a westerly direction to the point of beginning.

(b) Restrictions. The Diamond Head Restricted Area is designated for surfboards, sailboards and manually propelled vessels. No person shall operate a motorized vessel within this area. [Eff 2/24/94]
(Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-256-91 Waikiki Ocean Waters Restricted

Zones. (a) Waikiki Speed Zone.

(1) Waikiki speed zone means the area confined by the boundaries shown for said zone on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water of the shoreline at the southern tip of Magic Island on a straight line to the Ala Wai Entrance Buoy G "1", then on a straight line to Diamond Head Buoy R "2", then on a straight line toward Diamond Head Lighthouse to intersect the Diamond Head windsurfing zone boundary, then along the boundary to the low water mark at Diamond Head Beach Park, then along the low water mark following the shoreline to the point of beginning.

(2) Restriction. No person shall operate a vessel or watercraft within the Waikiki

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speed zone at a speed in excess of slow-no-wake. Vessel operators shall exercise caution while transiting the area due to heavy use by swimmers.

(b) Waikiki Commercial Thrill Craft Zone A.

(1) Waikiki Thrill Craft Zone A means the area confined by the boundaries shown on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water by azimuth measured clockwise from True South, 045 degrees for a distance of three thousand six hundred feet from the low water mark of the tip of the groin at the southern boundary of Fort DeRussy Beach Park; then on a radius of two hundred feet around that point.

(c) Waikiki Commercial Thrill Craft Zone B.

(1) Waikiki Commercial Thrill Craft Zone B means the area confined by the boundaries shown for said zone on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter, which boundaries are described as follows:

Beginning at a point in the water by azimuth measured clockwise from True South, 025 degrees for a distance of three thousand eight hundred feet from the low water mark of the tip of the groin at the southern boundary of Fort DeRussy Beach Park; then on a radius of two hundred feet around that point.

(d) Restrictions. Waikiki Commercial Thrill Craft Zone A and Zone B are designated commercial thrill craft areas. No commercial operator permittee shall operate more than six rented thrill craft within it assigned area at any one time. [Eff 2/24/94] (Auth: HRS §§200-23, 200-24, 200-37) (Imp: HRS §§200-23, 200-24, 200-37)

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§13-256-92 South Shore Parasail Area. (a) South Shore Parasail Area is the area defined on Exhibit "LL", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at buoy R-2 of Kalihi Channel entrance; then by straight line to buoy G-1 of the Ala Wai channel; then by straight line to buoy R-2 off Diamond Head.

(b) South Shore Parasail Area is designated for the operation of parasail vessels. No more than four commercial operating area use permits shall be authorized in this area. No permittee shall operate more than one vessel with a parasail aloft at any one time. All operating parasail vessels shall remain seaward of the boundary line. No person shall operate a parasail aloft within one thousand feet of any channel entrance buoys. All other vessels using this area shall exercise extreme caution. This area shall be closed to parasail operations from January 6 to May 15 of each year.

(c) South Shore Alternate Parasail Area is the area defined on Exhibit "LL", dated February 7, 1990, and located at the end of this subchapter. The boundaries are as follows:

Beginning at buoy R-2 of Kalihi Channel entrance; then by straight line to buoy R-2 off Diamond Head.

(d) South Shore Alternate Parasail Area is designated for parasail operations from January 6 to May 15 of each year. No more than four parasail vessels shall be operated within this area during this period. All parasail vessels with parasail aloft, shall remain seaward of the boundary line. No person shall operate a parasail aloft within one thousand feet of any channel entrance buoys. All other vessels using this area shall exercise extreme caution. [Eff 2/24/94] (Auth: HRS §§200-22, 200-23, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

Unofficial Compilation

§13-256-93 Kahakaaulana Islet (Harris Is.)

Commercial Zone. (a) Zone A Restricted Area is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 123 degrees for a distance of five hundred twenty-five feet from a point on the low water mark on the eastern tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

(b) Zone B Restricted Area is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 208 degrees for a distance of four hundred fifty feet from a point on the low water mark on the eastern tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

(c) Zone C Restricted Area is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 242 degrees for a distance of nine hundred feet from a point on the low water mark on the eastern tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

(d) Zone D Restricted Area is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 115 degrees for a distance of six hundred forty-five feet from a point on the low water mark on the western tip of Mokuoeo Island; then on a radius of two hundred feet around that point.

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(e) Zones A, B, C, and D are designated as commercial thrill craft zones. No commercial operator permittee shall operate more than six rented thrill craft within the assigned zones at any one time.

(f) Zone E restricted zone is the area encompassed by the boundaries shown on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the northern tip of Kahakaaulana Islet (Harris Is.), then by azimuth measured clockwise from True South, which is 180 degrees for a distance of three hundred sixty feet; 090 degrees for a distance of one thousand fifty feet; 000 degrees for a distance of one thousand two hundred seventy-five feet; then by a straight line to the shoreline at the south tip of Kahakaaulana Islet (Harris Is.).

(g) Zone E restricted zone is designated a commercial ocean activities zone for commercial sailing, windsurfing and diving. Vessels transiting this area shall exercise extreme caution when occupied by commercial activities. [Eff 2/24/94] (Auth: HRS §§200-23, 200-24, 200-37) (Imp: HRS §§200-23, 200-24, 200-37)

§13-256-94 Reef Runway Zone F. (a) The Reef Runway Zone F is the area encompassed by the boundaries shown of the zone on Exhibit "NN", dated June 6, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water by azimuth measured clockwise from True South, 323 degrees for a distance of four hundred fifty feet from the low water mark of the western boundary of the Reef Runway 8R; then 323 degrees for a distance of two thousand seven hundred sixty feet; 270 degrees for a distance of thirteen thousand seven hundred ten feet; 180 degrees for a distance of two thousand two hundred fifty feet; then by a straight line to the point of beginning.

Unofficial Compilation

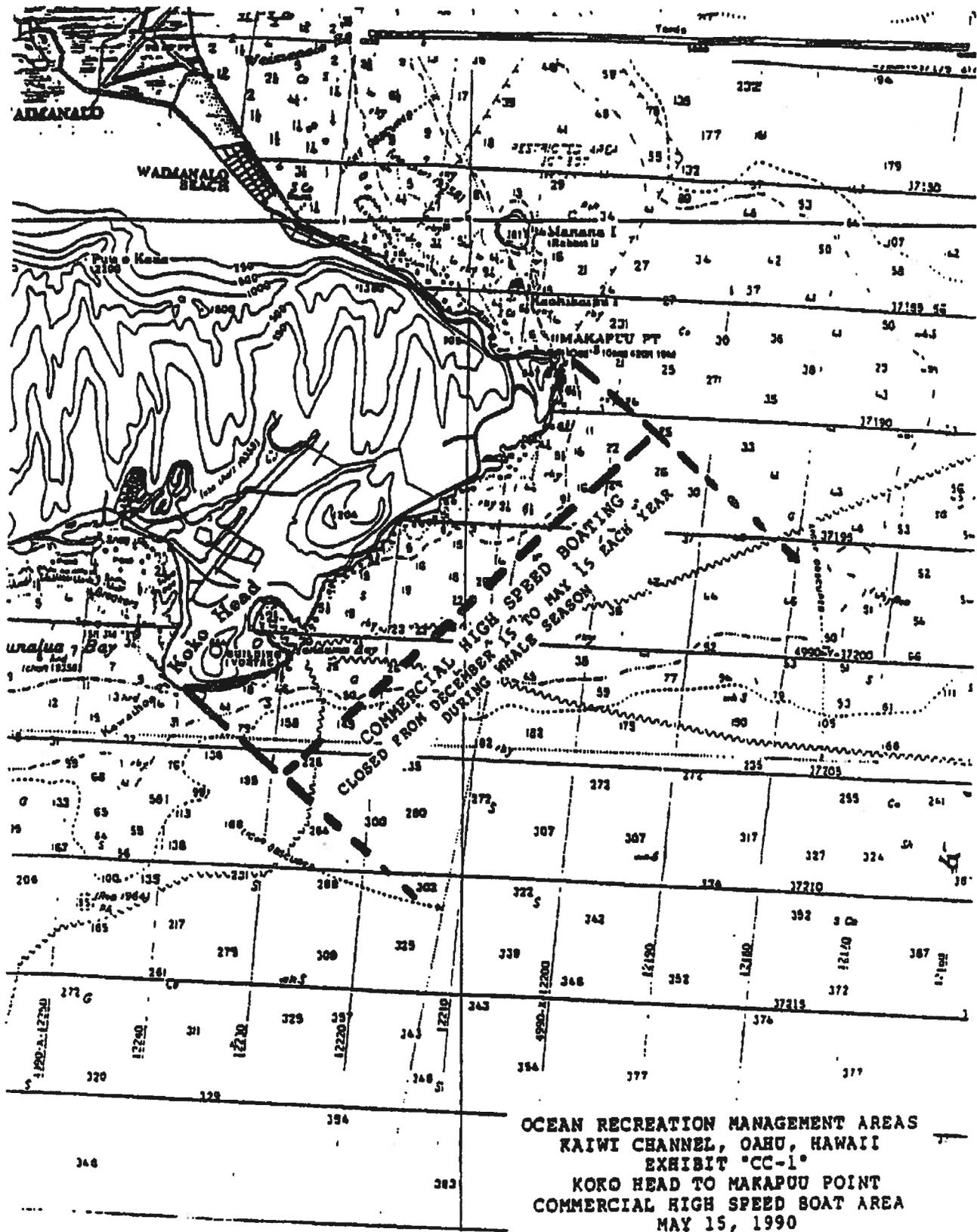
(b) The Reef Runway Zone F is designated for recreational thrill craft operations. No person shall operate a commercial thrill craft within this area. Any vessel transiting this area shall exercise extreme caution when occupied by recreational thrill craft. [Eff 2/24/94] (Auth: HRS §§200-23, 200-24, 200-37) (Imp: HRS §§200-23, 200-24, 200-37)

§13-256-95 Koko Head and Makapuu commercial high speed boating zone. (a) The zone is the area defined on Exhibit "CC-1", dated May 15, 1990, and located at the end of this subchapter. The boundaries are as follows:

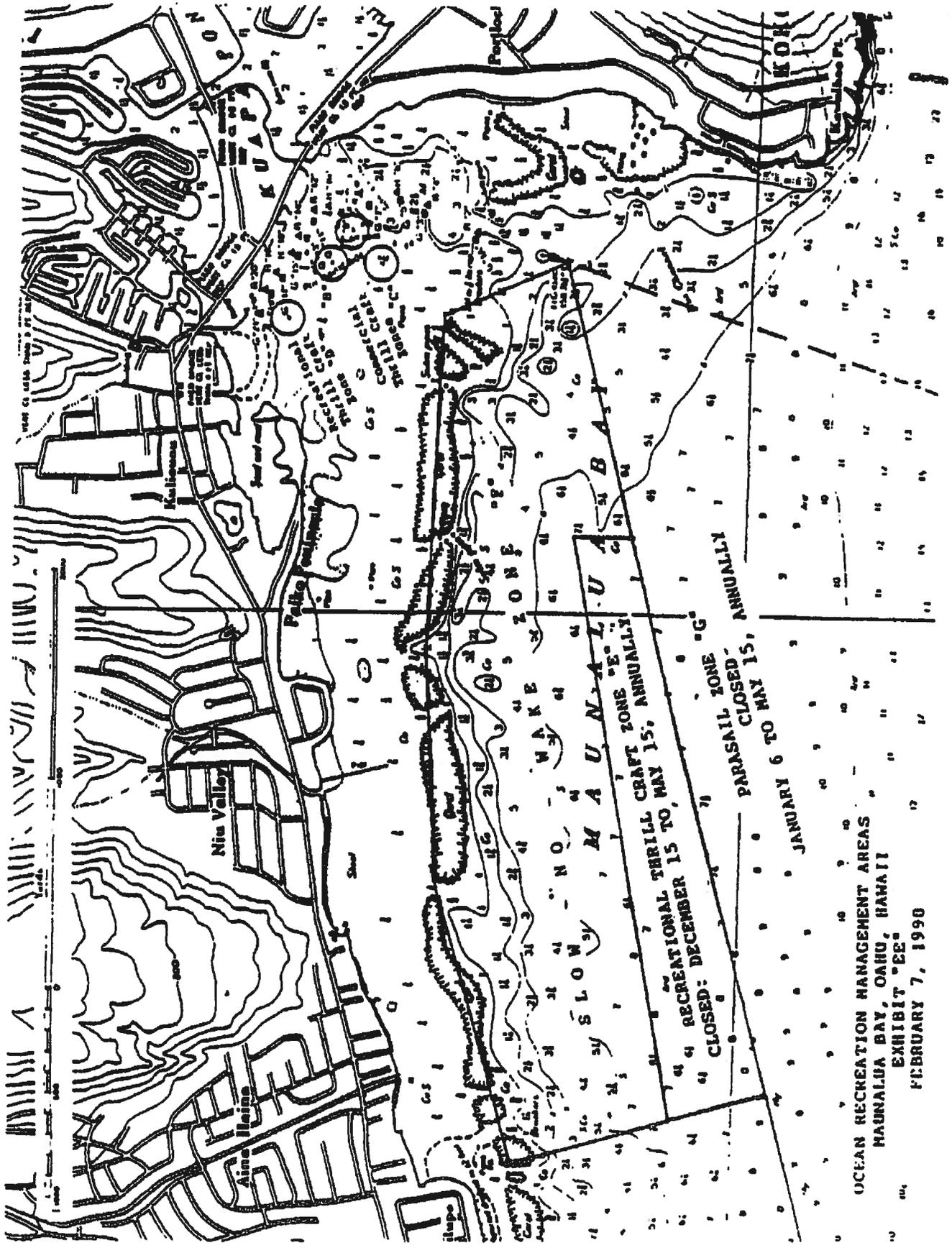
Beginning at point in the water, by azimuth measured clockwise from True South, 312 degrees from Kawaihoa Point, establishing the southwest boundary extending seaward; then on a line not less than one thousand five hundred feet from the shoreline to Makapuu Point; then 311 degrees extending seaward from Makapuu Point, establishing the northeast boundary.

(b) This zone is designated for the operation of commercial high speed boats. No more than four commercial operating area use permits for high speed boats shall be issued in this zone. All operating commercial high speed boats shall remain seaward of the shoreward boundary as shown on Exhibit "CC-1". All other vessels transiting this zone shall exercise extreme caution. This zone shall be closed to commercial high speed boat operations during the whale season, from December 15 to May 15 of the following year. [Eff 2/24/94] (Auth: HRS §§200-22, 200-23, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

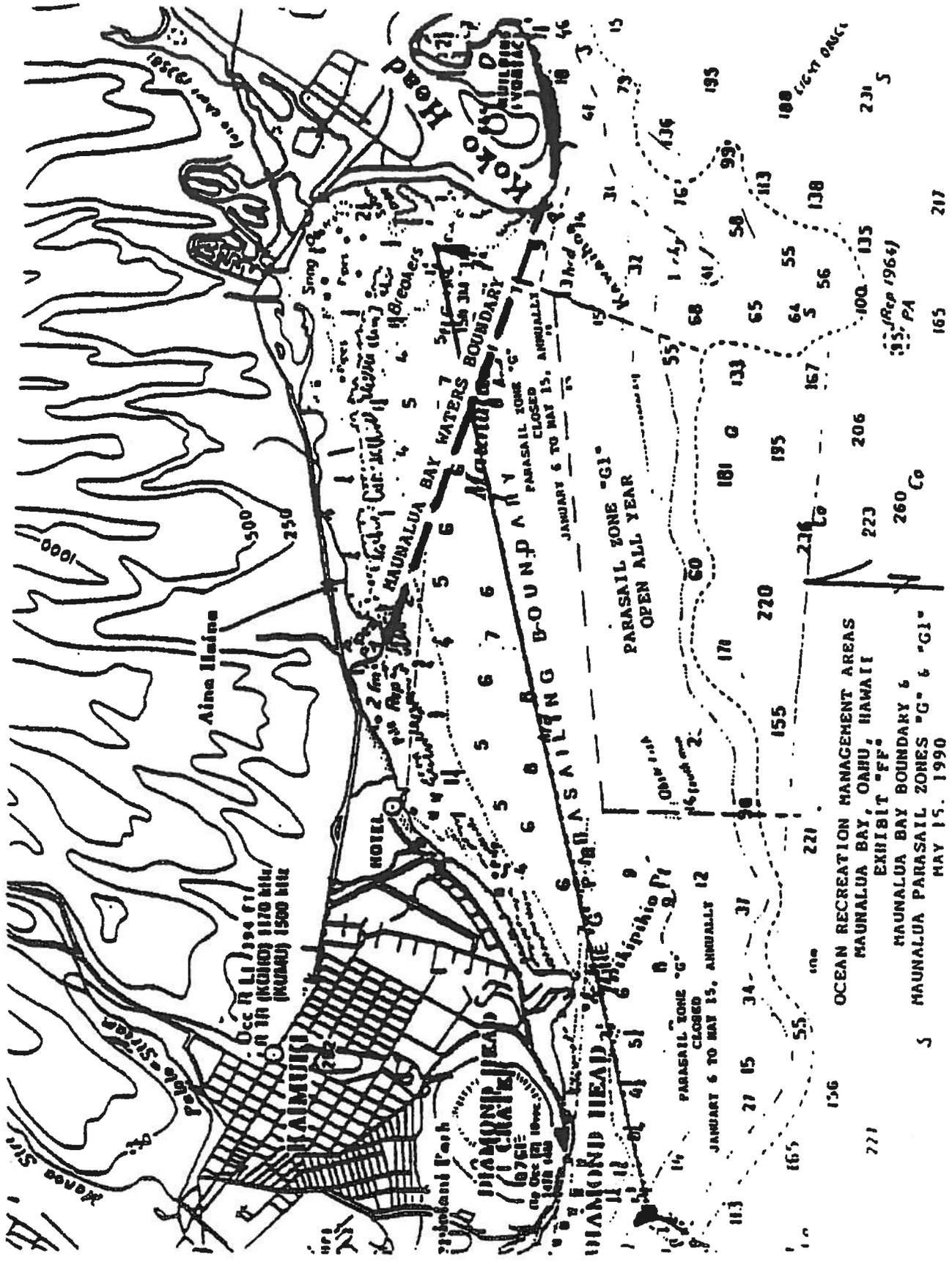
§13-256-96 Ke'ehi Lagoon canoe racing zone. (a) The Ke'ehi Lagoon canoe racing zone is the area encompassed by the boundaries of the zone shown on Exhibit "NN-1", dated August 15, 1990, and located at



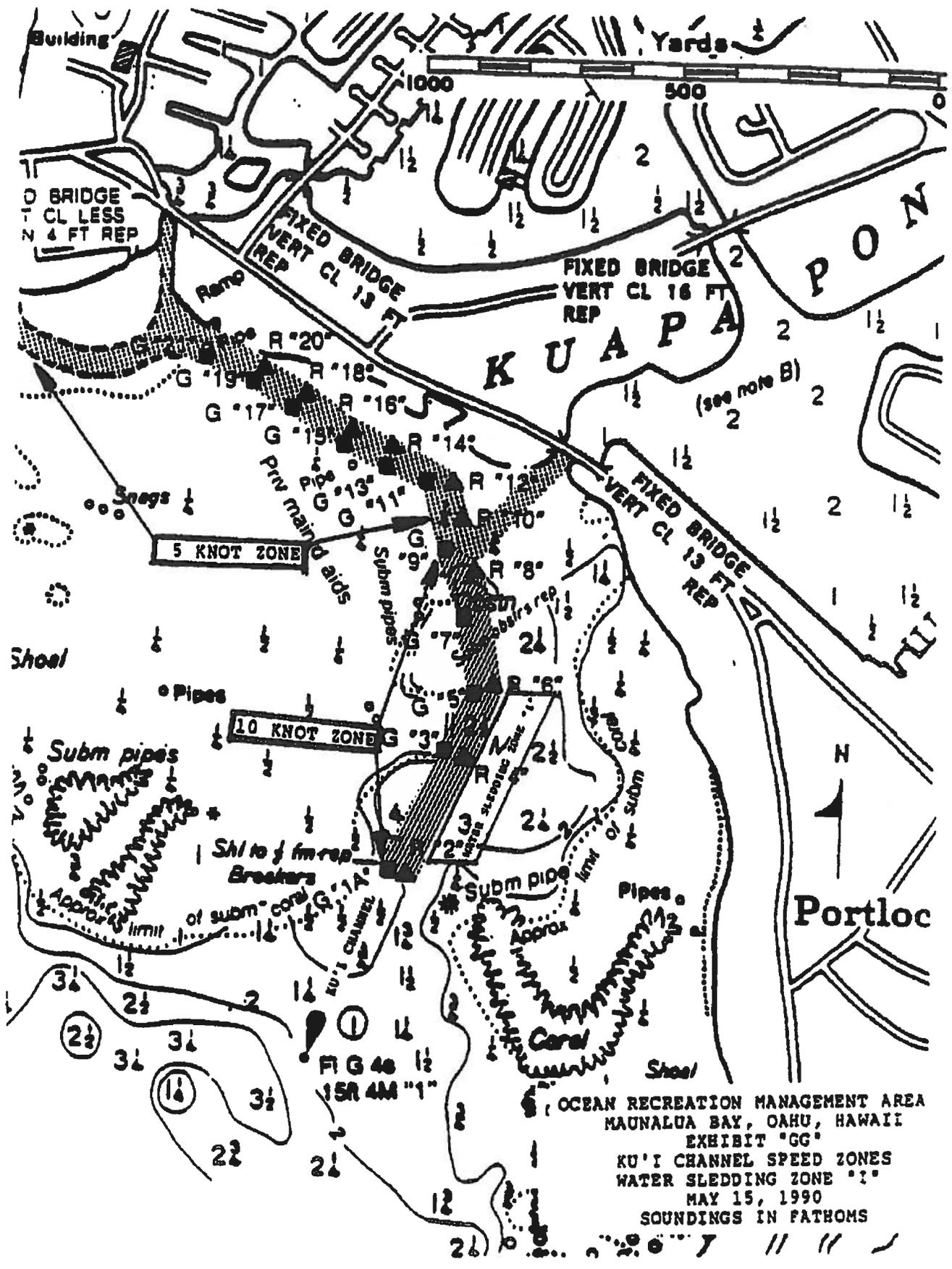
OCEAN RECREATION MANAGEMENT AREAS
 KAIWI CHANNEL, OAHU, HAWAII
 EXHIBIT "CC-1"
 KOKO HEAD TO MAKAPUU POINT
 COMMERCIAL HIGH SPEED BOAT AREA
 MAY 15, 1990
 SOUNDINGS IN FATHOMS

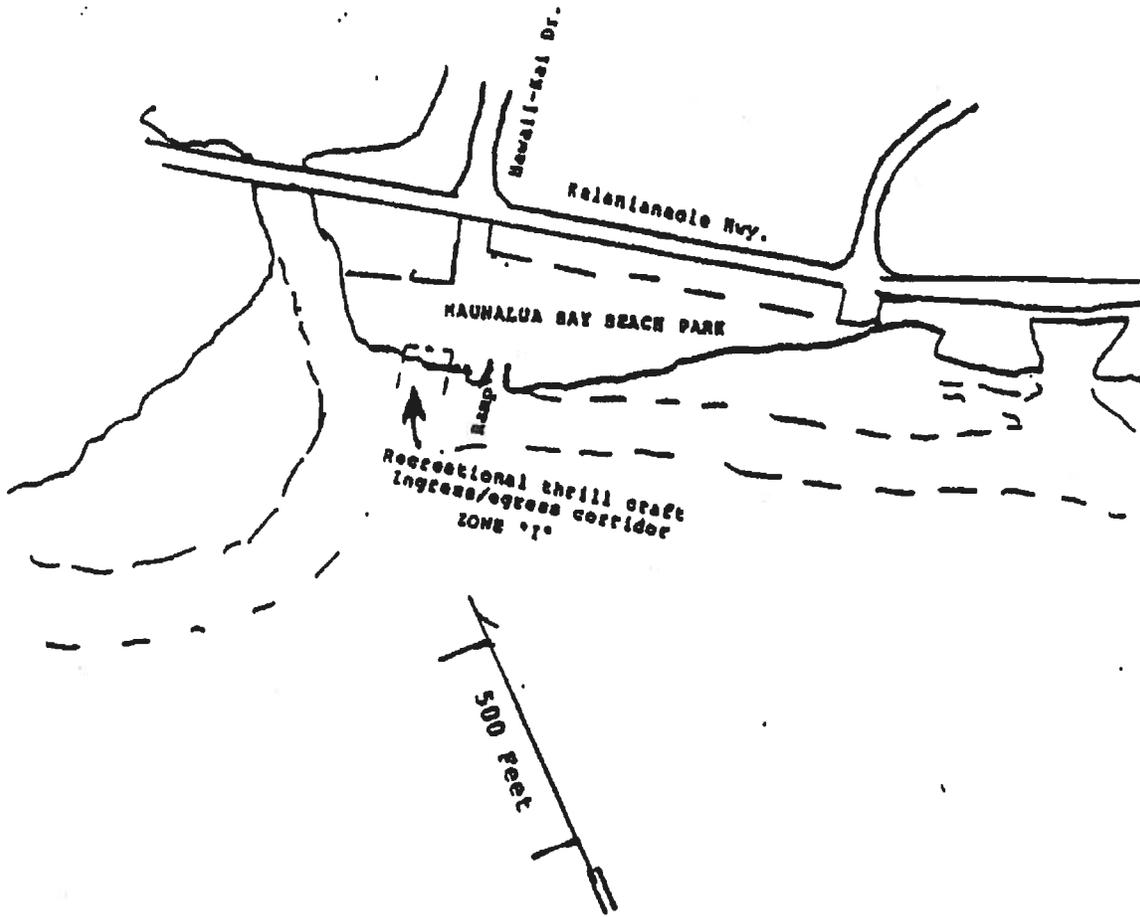


OCEAN RECREATION MANAGEMENT AREAS
 MAUNALOA BAY, OAHU, HAWAII
 EXHIBIT "EE"
 FEBRUARY 7, 1990



1-730



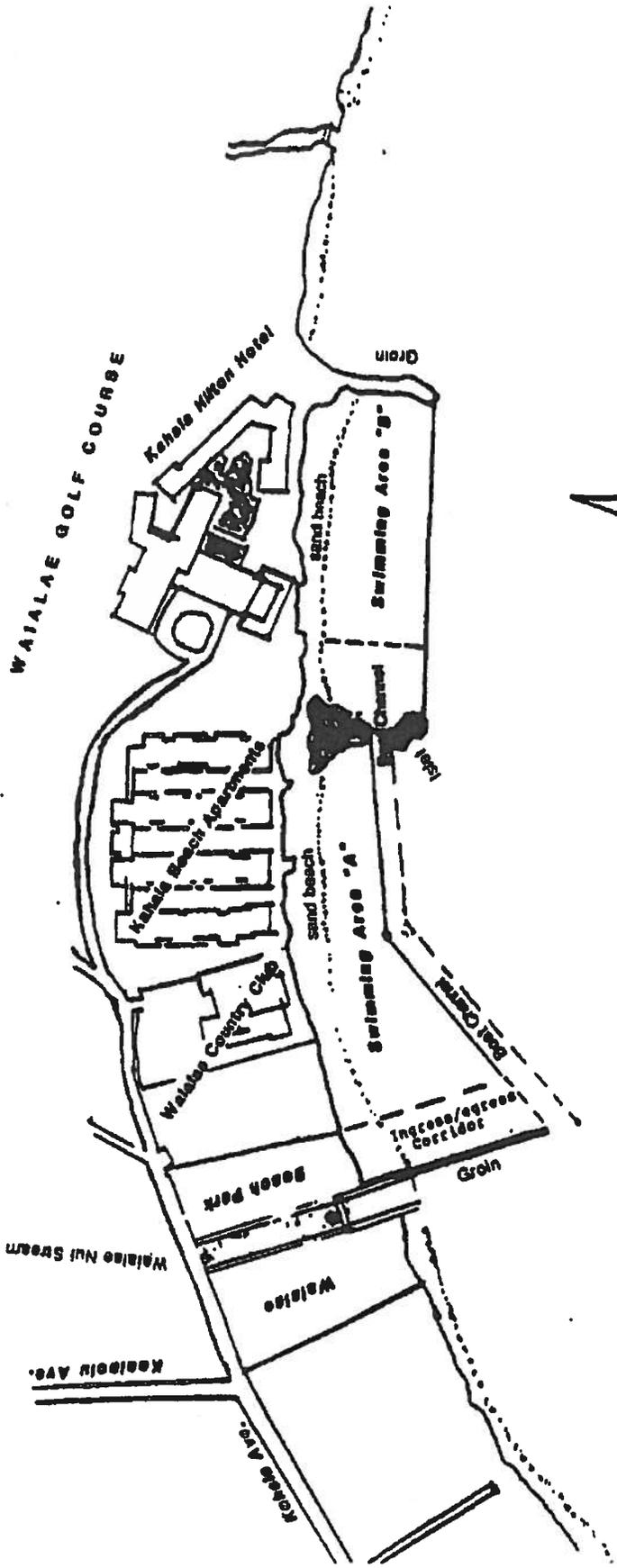


OCEAN RECREATION MANAGEMENT AREAS

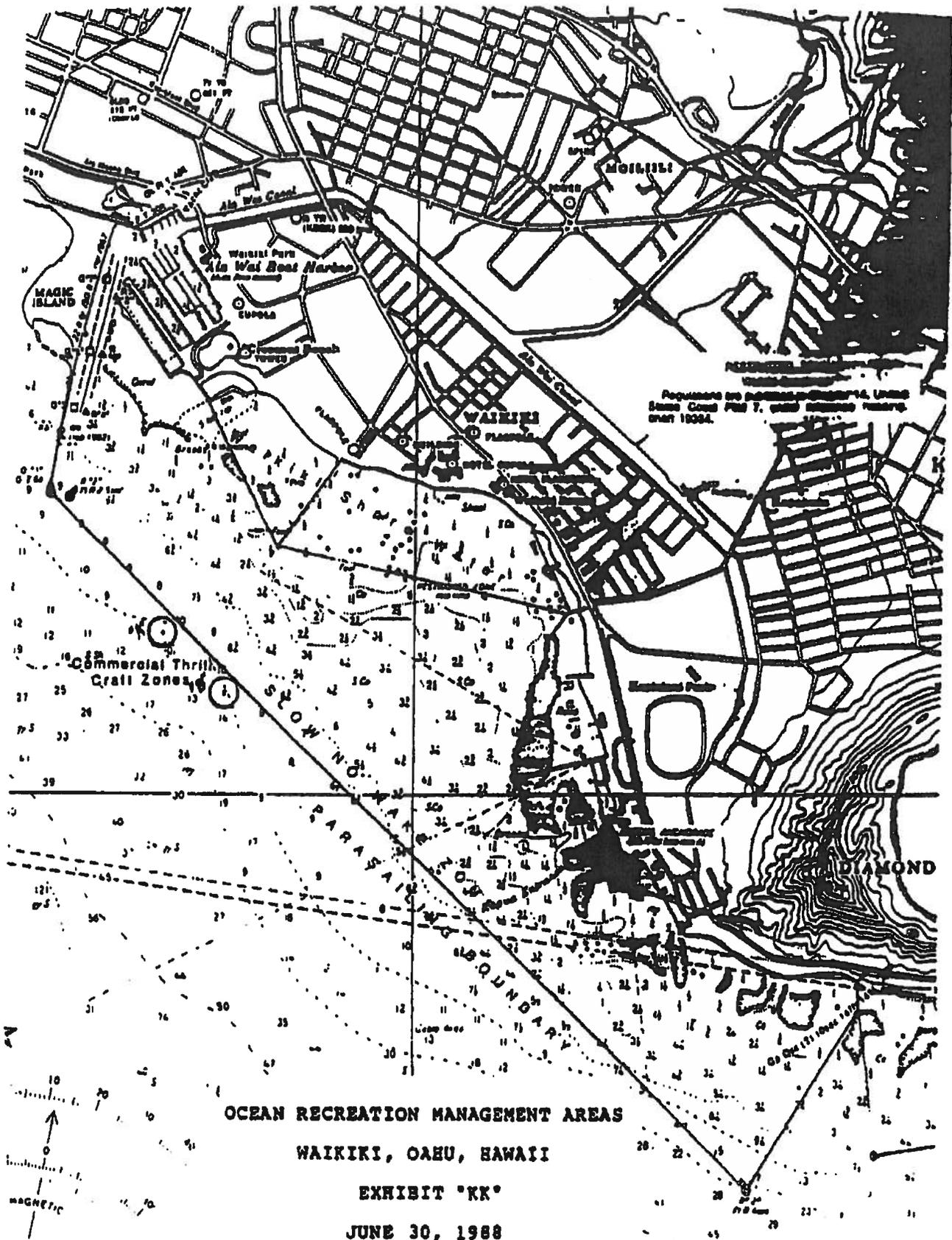
**MAUNALOA BAY, OAHU, HAWAII
RECREATIONAL THRILL CRAFT
INGRESS/EGRESS CORRIDOR**

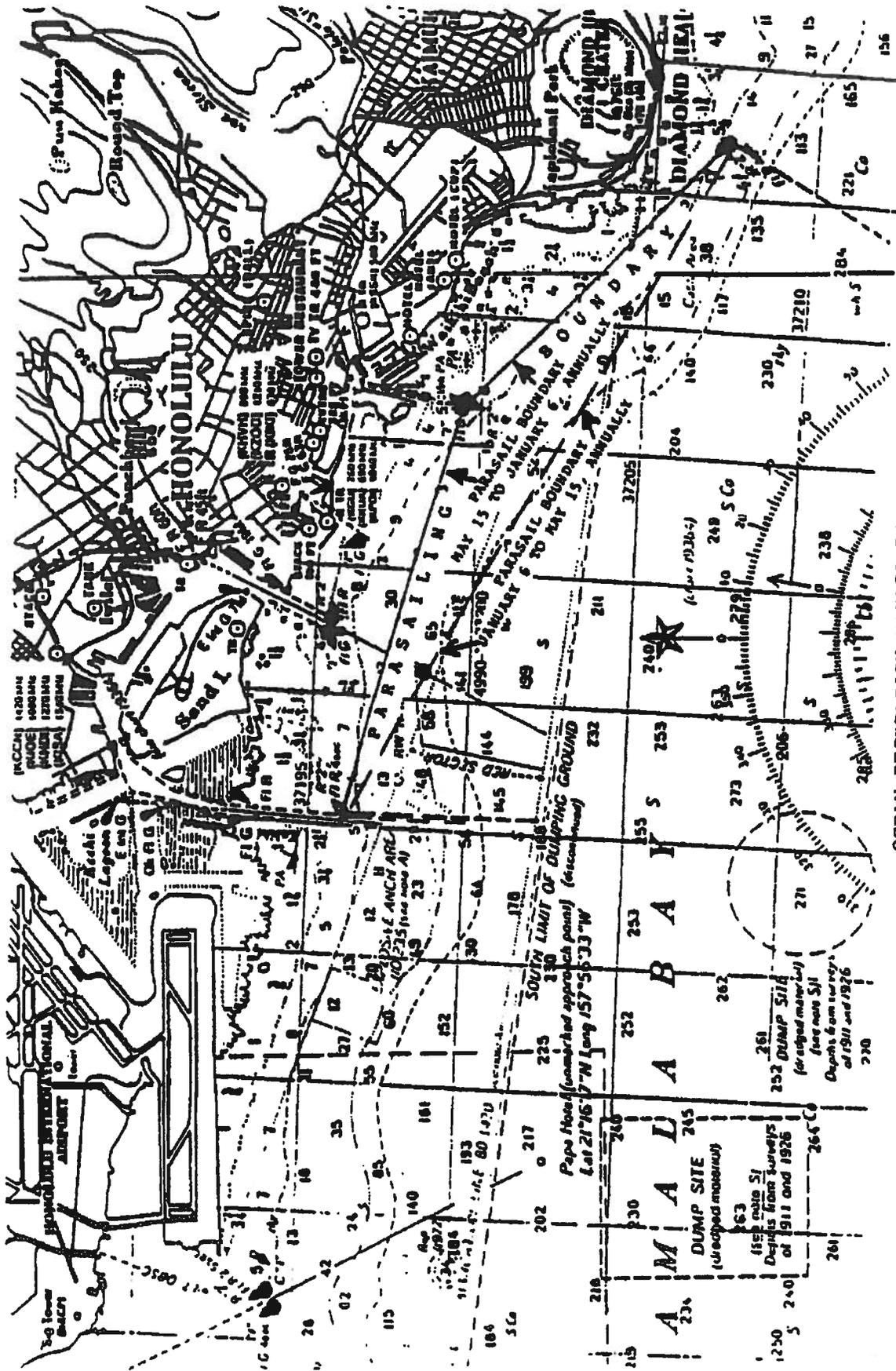
EXHIBIT "HH"

AUGUST 19, 1988

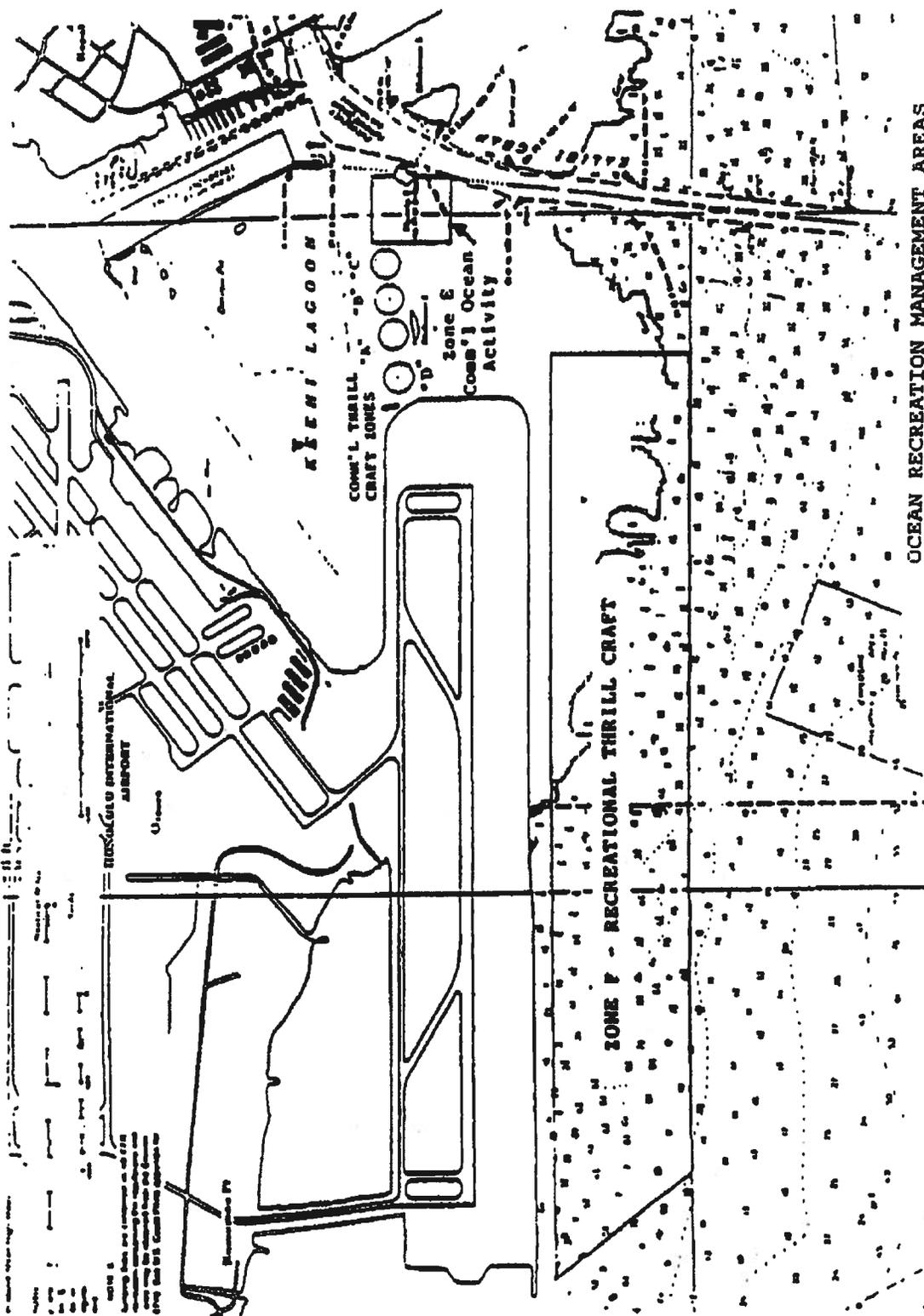


OCEAN RECREATION MANAGEMENT AREAS
 WAIALAE-KAHALA, OAHU, HAWAII
 EXHIBIT "II"
 AUGUST 19, 1988

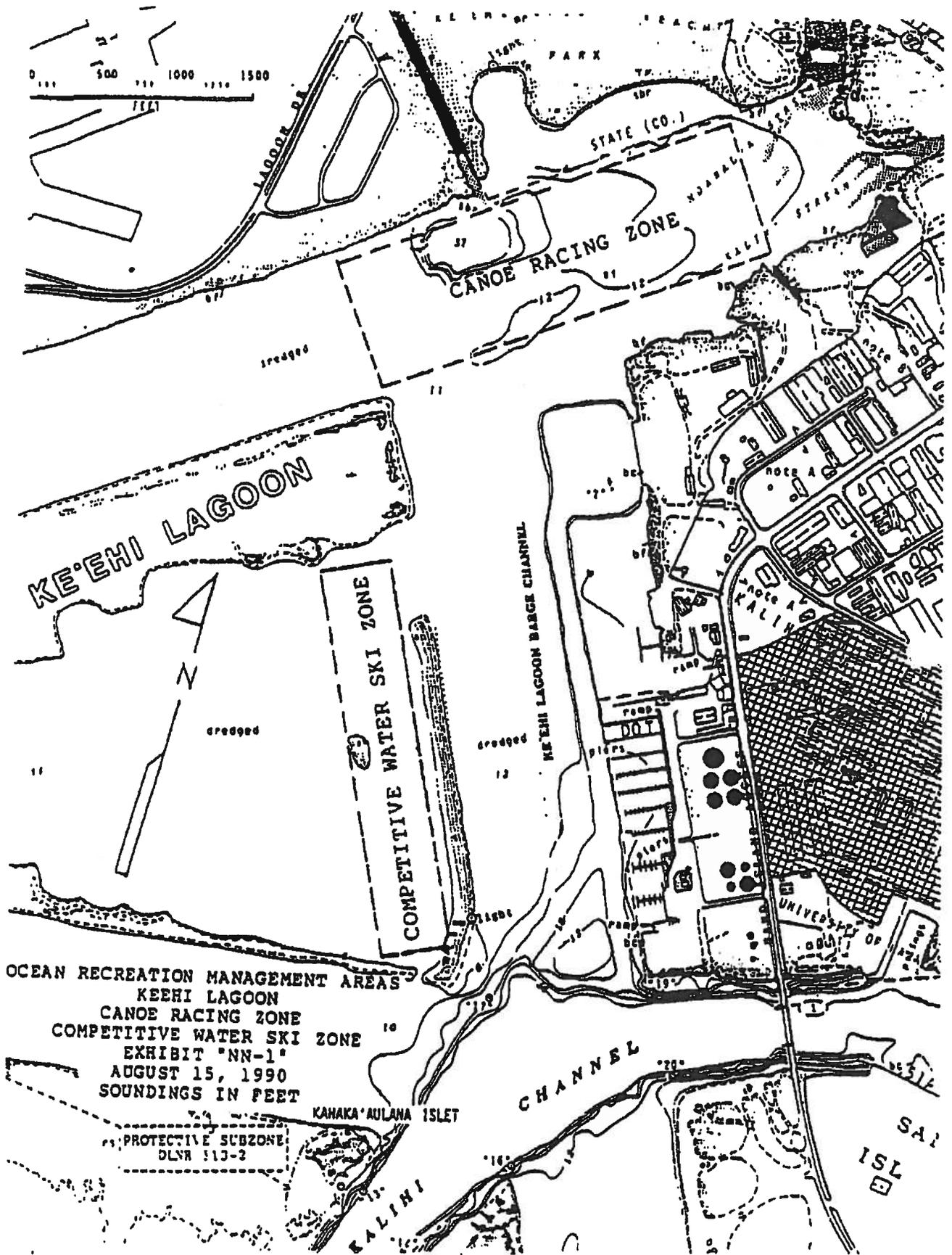




OCEAN RECREATION MANAGEMENT AREAS
 HAWAII, OAHU, HAWAII
 SOUTH SHORE PARASAIL ZONE
 EXHIBIT "LL"
 FEBRUARY 7, 1990
 SOUNDINGS IN FATHOMS



OCEAN RECREATION MANAGEMENT AREAS
 KE'EHII LAGOON, OAHU, HAWAII
 KAHAKAULANA ISLET (HARRIS IS.) COMMERCIAL ZONE
 COMMERCIAL THRILL CRAFT ZONE "A", "B", "C" & "D"
 REEF RUNWAY RECREATIONAL THRILL CRAFT ZONE
 EXHIBIT "NN"
 JUNE 6, 1989



OCEAN RECREATION MANAGEMENT AREAS

KEEHI LAGOON
 CANOE RACING ZONE
 COMPETITIVE WATER SKI ZONE

EXHIBIT "NN-1"
 AUGUST 15, 1990
 SOUNDINGS IN FEET

PROTECTIVE SUBZONE
 DLNR 513-2

II. Service Summary and Outcomes

1. Describe the scope of work, tasks and responsibilities;

The scope of work, tasks and responsibilities include developing study methodologies, conducting surveys, assemble data, and manage the overall program.

1. Develop and Establish survey study methodologies and procedures:

While the basic process for the survey is understood; public purpose, geographic area, population to be served, etc., the details of the survey process will be developed. The geographical areas within which to conduct the surveys will be specifically defined – baseline areas will reference South Oahu Ocean Recreation Management Area. The study areas will be further delineated into ranges from shore line to establish use-density zones. Survey methodology and procedures will be defined and include; survey intervals, survey frequency, survey target definition, and survey target verification for quality assurance. The data analysis methods will be defined to include statistical data reduction tools to apply and output formatting for final reporting.

2. Conduct Ocean Recreation Area Surveys:

Using Navatek contributed/supplied assets including; vessels, mooring facilities, survey equipment and data recording equipment, surveys will be conducted in South Oahu Ocean Recreation Management Area. On water surveys of activity will be conducted from vessels with the range and endurance to support accessing all areas and remaining on station through the individual survey windows. Supplemental surveys will be conducted from the shoreline to access areas restricted to vessel operations.

3. Data Compilation, Data Reduction, Report Production:

All data collected will be consolidated in to a comprehensive report. Survey data will be compiled and organized for analysis. Raw data will be available as final report appendix Information. Data reduction of survey sightings and counts will be applied using statistical analysis tools. A detailed report of results, analysis, interpretation and conclusions will be provided.

4. Program Management

Navatek shall maintain the overall program management, which includes overall direction, technical guidance, program schedule, reviews, report production, contracting support, and other programmatic.

2. The applicant shall provide a projected annual timeline for accomplishing the results or outcomes of the service;

The project work will commence upon award and continue for 12 months. The following timeline details the activity:

Task	Description	Months After Award											
		1	2	3	4	5	6	7	8	9	10	11	12
1	Develop Plan and Methodologies	█											
2	Conduct Surveys		█	█	█	█	█	█	█	█			
3	Analyze Data. Produce Report										█	█	█
4	Program Management	█	█	█	█	█	█	█	█	█	█	█	█

3. The applicant shall describe its quality assurance and evaluation plans for the request. Specify how the applicant plans to monitor, evaluate, and improve their results;

Navatek has conducted many at-sea tests and trials with experimental craft, ocean wave sensing equipment, data collection from electronic sensors for up to 25 channels at rates up to 20,000Hz, and supplemented all data collection with real-time observational logging and recording. The processes for the at-sea data collection are established.

For the purposes of the proposed survey, observations shall be recorded via manual log and include date, time, location confirmed with GPS position, type of activity, nature of activity, course, rate of travel and other notations. Data will be transcribed to computer log on board as time allows, or no later than close of business on the day of the observations. All available tools for sightings will be used including binoculars, bearing compasses, radar, and electronic chart plotting/course tracking software.

Two persons will be jointly conducting observations and will verify and confirm sightings. Acknowledgement of sightings will be required to establish them for record keeping. All data recording will be signed off daily by the persons conducting the survey.

The data will be evaluated for quality by reviewing logs and raw data streams for missing data components. (I.e. A sighting may not include a course heading or rate of travel.) During data

reduction, the data streams will be cleaned of incomplete entries to allow for fully accurate and complete data sets to be used in analysis.

- 4. The applicant shall list the measure(s) of effectiveness that will be reported to the State agency through which grant funds are appropriated (the expending agency). The measure(s) will provide a standard and objective way for the State to assess the program's achievement or accomplishment. Please note that if the level of appropriation differs from the amount included in this application that the measure(s) of effectiveness will need to be updated and transmitted to the expending agency.**

The reporting will be to DLNR-DOBOR or other as necessary. The data outputs will be listed to include;

- usage of ocean areas by craft/equipment type,
- by time of day,
- by distance out from shore,
- use by day of the week with reference to seasonal and holiday impacts.
- The data outputs will be concise and clearly supported with intuitively readable chart graphics.

As a measure of effectiveness and accomplishment, the data outputs will represent the depth of the significant collection/observation efforts proposed. Trends in use, use by area, and use by time will be readily apparent and provide sound information on which to assess the need to adjust rules or policy. The study can be considered effective if it provides the State Legislature with adequate information to help determine:

- 1) any major changes in what ocean sports and recreation activities are taking place in the South Oahu Ocean Recreation Management Area (ORMA)
- 2) whether usage changes in the ORMA have increased the risk of accidents and resulting liability to the State and other parties.
- 3) whether current legislative rules and regulations may need to be reviewed and updated to reflect these changes.

III. Financial

Budget

1. The applicant shall submit a budget utilizing the enclosed budget forms as applicable, to detail the cost of the request.

Please see attached completed budget forms following this section.

2. The applicant shall provide its anticipated quarterly funding requests for the fiscal year 2012-2013.

Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total Grant
\$155,555	\$109,841	\$112,324	\$70,894	\$448,615

3. The applicant shall provide a listing of all other sources of funding that they are trying to obtain for fiscal year 2012-2013.

None. No other funds are being requested for FY2012-2013.

4. The applicant shall provide a listing of all state and federal tax credits that have been granted within the prior three years. Additionally, the applicant shall provide a listing of all state and federal tax credits they have applied for or anticipate applying for pertaining to any capital project, if applicable.

Navatek lists the following tax credits and capitol project tax credits :

Tax Credits	2010	2011	2012
State of Hawaii	\$0	\$0	\$0
Federal	\$0	\$0	\$0
Research & Development	\$207,720	\$125,909	\$208,333

Capitol Project Tax Credits	2010	2011	2012
State of Hawaii	\$0	\$0	\$0
Federal	\$0	\$0	\$0

BUDGET REQUEST BY SOURCE OF FUNDS
(Period: July 1, 2013 to June 30, 2014)

Applicant: Navatek Ltd.

BUDGET CATEGORIES	Total State Funds Requested (a)	Navatek Supplied Funding (b)	(c)	(d)
A. PERSONNEL COST				
1. Salaries	\$152,191.99			
2. Payroll Taxes & Assessments				
Payroll Taxes	\$13,697.28			
DCAA Overhead/Assessments	\$168,933.11			
3. Fringe Benefits	\$48,701.44			
TOTAL PERSONNEL COST	\$383,523.81			
B. OTHER CURRENT EXPENSES				
1. Airfare, Inter-Island				
2. Insurance				
3. Lease/Rental of Equipment		\$215,000.00		
4. Lease/Rental of Space				
5. Staff Training				
6. Supplies				
7. Telecommunication				
8. Utilities				
9. Port Entry Fees	\$2,408.60			
10. Fuel	\$82,684.16			
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
TOTAL OTHER CURRENT EXPENSES	\$65,090.76	\$215,000.00		
C. EQUIPMENT PURCHASES				
D. MOTOR VEHICLE PURCHASES				
E. CAPITAL				
TOTAL (A+B+C+D+E)	\$448,614.57	\$215,000.00		
SOURCES OF FUNDING		Budget Prepared By:		
(a) Total State Funds Requested	\$448,614.57	Name (Please type or print) Phone		
(b) Navatek Supplied Funding	\$215,000.00	Signature of Authorized Official Date		
(c)				
(d)				
TOTAL BUDGET	\$663,614.57	Name and Title (Please type or print)		

BUDGET JUSTIFICATION PERSONNEL - SALARIES AND WAGES

Applicant: Navatek Ltd.

Period: July 1, 2013 to June 30, 2014

POSITION TITLE	FULL TIME EQUIVALENT	ANNUAL SALARY A	% OF TIME ALLOCATED TO GRANT REQUEST B	TOTAL STATE FUNDS REQUESTED (A x B)
Director of Marine Engineering		\$194,914.72	9.09%	\$ 17,719.52
Sen Contracts Administrator		\$72,508.80	3.85%	\$ 2,788.80
Applied Engineering Division Manager/Vessel Operator		\$117,000.00	27.69%	\$ 32,400.00
Mechanical Engineer/Vessel Operator		\$68,286.40	14.10%	\$ 9,630.13
Mechanical Engineer/Ship Captain/Controls Engineer/PADI Certified Diver		\$62,483.20	14.10%	\$ 8,811.73
Small Vessel Maintenance Manager/PADI Certified Diver/Vessel Operator		\$52,000.00	14.10%	\$ 7,333.33
Marine Mechanic III/PADI Certified Diver		\$81,827.20	16.03%	\$ 13,113.33
Marine Mechanic II/PADI Certified Diver		\$68,494.40	16.03%	\$ 10,976.67
Marine Mechanic I		\$52,520.00	16.03%	\$ 8,416.67
Electrician		\$69,784.00	26.92%	\$ 18,788.00
Controls Engineer		\$110,011.20	20.19%	\$ 22,213.80
				\$ -
				\$ -
				\$ -
TOTAL:				\$ 152,191.99

JUSTIFICATION/COMMENTS: The budget listed above assumes a planning period of one month which will be primarily staffed by the Director of Marine Engineering, the Applied Engineering Division Manager, a Mechanical Engineer, and a senior Marine Mechanic. The survey portion of the job will consist of two approximately 8 hour trips per week. The surveys will be staffed by a ship captain or a vessel operator, a marine mechanic, a controls engineer, and an electrician. The data reduction and report writing will be completed by the Applied Engineering Division Manager and the Mechanical Engineers.

BUDGET JUSTIFICATION - EQUIPMENT AND MOTOR VEHICLES

Applicant: Navatek Ltd.

Period: July 1, 2013 to June 30, 2014

DESCRIPTION EQUIPMENT	NO. OF ITEMS	COST PER ITEM	TOTAL COST	TOTAL BUDGETED
			\$ -	
			\$ -	
			\$ -	
			\$ -	
			\$ -	
TOTAL:				

JUSTIFICATION/COMMENTS:

DESCRIPTION OF MOTOR VEHICLE	NO. OF VEHICLES	COST PER VEHICLE	TOTAL COST	NUMBER OF DAYS UTILIZED	TOTAL BUDGETED
HDV-100 (Navatek Supplied Asset)	1.00	\$6,500.00	\$ 6,500.00	10.00	65000
BLB-65 (Navatek Supplied Asset)	1.00	\$4,500.00	\$ 4,500.00	10.00	45000
Bladerunner 51 (Navatek Supplied Asset)	1.00	\$3,500.00	\$ 3,500.00	10.00	35000
TLB-CAT (Navatek Supplied Asset)	1.00	\$3,500.00	\$ 3,500.00	10.00	35000
Bladerunner 35 (Navatek Supplied Asset)	1.00	\$1,500.00	\$ 1,500.00	10.00	15000
Aronow 40 CAT (Navatek Supplied Asset)	1.00	\$1,500.00	\$ 1,500.00	10.00	15000
MISC Craft Under 30 ft (Navatek Supplied Assets)	1.00	\$500.00	\$ 500.00	10.00	5000
TOTAL:	7		\$ 21,500.00	70	\$215,000

JUSTIFICATION/COMMENTS: All of the assets listed above are supplied and funded by Navatek. See attached reference titled Navatek Charter Rates.doc for cost basis. The budget assumes seventy survey trips equally distributed between the different boats and ships in Navatek's fleet.

**BUDGET JUSTIFICATION
CAPITAL PROJECT DETAILS**

Applicant: Navatek Ltd.

Period: July 1, 2013 to June 30, 2014

FUNDING AMOUNT REQUESTED						
TOTAL PROJECT COST	ALL SOURCES OF FUNDS RECEIVED IN PRIOR YEARS		STATE FUNDS REQUESTED FY:2013-2014	OF FUNDS REQUESTED FY:2013-2014	FUNDING REQUIRED IN SUCCEEDING YEARS	
	FY: 2011-2012	FY: 2012-2013			FY:2014-2015	FY:2015-2016
PLANS	0	0	0	0	0	0
LAND ACQUISITION	0	0	0	0	0	0
DESIGN	0	0	0	0	0	0
CONSTRUCTION	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
TOTAL:	0	0	0	0	0	0
JUSTIFICATION/COMMENTS:						

IV. Experience and Capability

A. Necessary Skills and Experience

The applicant shall demonstrate that it has the necessary skills, abilities, knowledge of, and experience relating to the request. State your experience and appropriateness for providing the service proposed in this application. The applicant shall also provide a listing of verifiable experience of related projects or contracts for the most recent three years that are pertinent to the request.

Navatek's vessels have logged thousands of hours in the waters of the south shore of Oahu. All of the testing for Navatek's Hawaii-built prototypes is conducted between Makapuu and Kaena Point. The employees that will be used for this survey have qualifications that include the following:

- USCG Captain's License,
- USCG Duty Designated Engineer,
- PADI dive certifications,
- first aid,
- CPR certifications.

In addition to these formal qualifications and work experience in these waters, many of the employees also spend their free time in this region swimming, canoe paddling, surfing, fishing, spearfishing, wind surfing, kite surfing, or kayaking. The intimate knowledge of the waters and coastline greatly enhance Navatek's ability to perform meaningful surveys.

The engineers scheduled to support this effort also have a multitude of experience involving complex data acquisition programs. Hardware and software already owned by Navatek will be utilized to assist in the data collection, and laptop computers will be taken on each survey to log and store the collected data in real time. Navatek also possesses a number of data reduction tools and algorithms that will be employed after the data has been collected.

Previous Projects with Relevant Experience:

- 1) Pacific Missile Range Charters
 - a. Utilized the BLB-65 to support missile recovery mission on Kauai
- 2) Data Acquisition Programs Conducted off of the South Shore of Oahu
 - a. Include operations at various speeds in a wide range of sea states

- b. Also include wave height and frequency measurements
- c. Vessels Tested
 - i. HDV-100
 - ii. BLB-65
 - iii. BR-51
 - iv. TLB-CAT
 - v. SeaFlyer
 - vi. Foilcat
 - vii. NSW RIBS
 - viii. Navy Standard RIBS
 - ix. Ultra Deep-V
 - x. ST Marine USVs
- 3) "Battleship" Movie Support
 - a. Fabricated part of the on-water set for the movie
 - b. Supported filming of key scenes off of Barber's Point
- 4) Buoy Retrieval Charters

B. Facilities

The applicant shall provide a description of its facilities and demonstrate its adequacy in relation to the request. If facilities are not presently available, describe plans to secure facilities. Also describe how the facilities meet ADA requirements, as applicable.

Navatek Construction and Operations Division employs a staff of 6 engineers and 20 small boat craftsmen and operators working out of offices and construction facilities located on the site of its sister company Pacific Shipyards International, Pier 41, Honolulu, Hawaii. Navatek's small boat construction facility shares Pacific Shipyard International's 7-acre construction and repair facilities and equipment including drydocking, rigging and crane services, steel and aluminum fabrication and welding, mechanical and machine shop, and painting and preservation. Navatek separately owns and operates a fiberglass reinforced plastics shop. The Navatek, Ltd. GRP shop includes a free-span 3000 square foot insulated building, a 1000 square foot covered boat shop and more than 5000 square feet of hard-top storage and lay-down area. The GRP shop and staff has the capability and expertise to work in a variety of composite materials including all fabrics such as Kevlar, carbon fiber and pre-pregs, and all resins such as vinylesters, epoxy and fire retardant formulations of each. The shop application techniques include capability for hand

Applicant: Navatek, Ltd.

laminating, vacuum bagging, and resin infusion. Staff experience includes fabrication and repair of US Navy RIBs, and other small Navy support craft and construction of America's Cup racing yachts. Certification for US Navy radome repair is pending.

Navatek has a fleet of vessels particularly suited for the waters off Oahu. These vessels including all maintenance as required and insurance are offered as in-kind contributing support to this project. See attached detail sheets for vessel information.

Gary K. Johnson, General Manager, Applied Engineering Division, Navatek Ltd. Gary joined Navatek Ltd. in December 2006 to assist in shipbuilding design and construction for Navatek. Gary served as project manager for the construction and commissioning of two 9M Unmanned Surface Vessels (USV) and one 16m USV that Navatek delivered to the ST Electronics. Gary now manages and supervises all of the engineers, naval architects, and craftsmen at Navatek's facility in Honolulu Harbor, and he is responsible for the fleet of technology demonstrator's consisting of boats and ships that range in size between 15ft and 100ft. Gary earned a B.S.E. in Mechanical Engineering from the University of California at Santa Barbara in 2006 and a M.S. in Naval Architecture from the University of Southampton in 2011. Gary spends the majority of his free time on boats and in the ocean. Gary is an avid fisherman, and he also paddles one and six-man canoes, surfs, kayaks, free-dives, and loves to stand-up paddle. He has paddled and escorted canoe races between Molokai and Oahu numerous times.

John Zuanich, Director of Marine Engineering, Navatek Ltd. John joined Navatek Ltd. in 1996 as Construction Manager in the Applied Engineering Division. Major Navatek projects managed by him include the rebuilding of the 140-passenger, 45-knot Westamarin-built Norwegian hydrofoil M.V. *Foilcat* (drives, propulsion system, foils and struts) and return of the vessel to commercial service as a commuter ferry in Hawaii. Prior to joining Navatek, Ltd., from 1983-1985 he served as Vice-President, Maintenance and Repairs for Guam-based Z Fishing Corp., which operates a fleet of twelve 250-foot super-seiner fishing vessels trawling throughout the Pacific. He received his Bachelor's degree in International Business from the University of Southern California in 1968. John spent many years competing in windsurfing races on Maui, but he recently made the switch to kite surfing.

Brian Kays, Controls Engineer, Navatek Ltd. Brian joined the company in 2002 and now manages the Electro/Mechanical Controls Systems Section. During his time at Navatek Ltd., he has supported a variety of projects including Seaflyer, HDV-100, and BLB-60 with hydraulic circuit design and fabrication and installation of ride control systems. Prior to coming to Navatek, Brian served as a Mechanical Engineer/Senior Design Engineer for Genie Industries. Brian holds a B.S. in Mechanical Engineering from the University of Washington. Brian is a key crew member for our larger vessels with hydraulically actuated ride control systems.

Audra White, Senior Contracts Administrator, Navatek Ltd.

William S. Lawson, Mechanical Engineer, Applied Engineering Division, Navatek Ltd. Billy joined Navatek Ltd. in July 2009 to assist in production and design of Navatek's prototype technologies. He earned a B.S.E. in Mechanical Engineering from the University of Hawaii and has held CPR and lifeguard certifications as a surf instructor along the south shore of Oahu. Billy has played a role in engineering and construction on projects such as the SLED and TLB Cat, and has also coordinated and executed testing programs and data collection on the performance of various prototypes. Billy is a competitive paddler, a surfer and a fisherman. He has spent the majority of his life participating in water sports along the south shore of Oahu.

Michael T. Buelsing, Mechanical Engineer and Vessel Captain, Navatek, Ltd. As a recent graduate from the University of San Diego with a B.A./B.S In Mechanical Engineering and a minor in Math, Michael started at Navatek in July of 2010. Bringing experience gained through designing and building a prototype wave energy generator for his senior project he has since supported a wide range of projects at Navatek. Some of the more notable projects he has worked on include designing a floating movie set that would eventually be filmed off of Koolina, and helping to design and test a range of amphibious vehicles that may be used to deliver aid to coastal areas recovering from natural disasters. In March of 2011 Michael earned a USCG Master's License entitling him to serve as the captain aboard Navatek's fleet of demonstrator vessels. In his free time he enjoys sailing, diving, and triathlons.

Will Foster, Small Craft Master, Applied Engineering Division, Navatek Ltd. Joining Navatek Ltd. in May of 2010, Will has been primarily active in vessel operation, technology demonstration, vessel maintenance, purchasing, and logistics. Graduated from the University of Oregon in 2006 in Environmental Science with a double minor in Geography and Biology, Will's affinity for the ocean brought him back to Hawaii where he was born and raised. Prior to Navatek Will spent 2007-2010 at the Kaneohe Marine Corps Base Marina as a mechanics assistant and boat operations specialist. Versed in sailing, a Hawaii state champion paddler, U.S. Department of Interior certified Inshore and Offshore Small Vessel Operator, and certified by PADI up to Rescue Diver, Will's continued to choose to spend his time on the water surfing, fishing, kayaking, free-diving, body surfing, stand-up paddling, and crossing inter-island channels by boat. Will has continued to renew his Medic First Aid and CPR certifications.

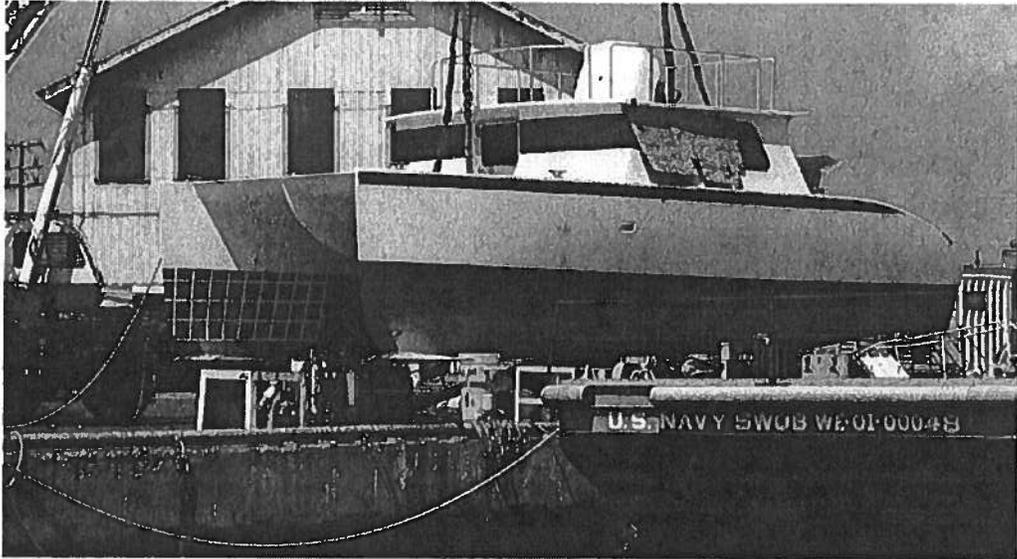
John Zaleski, Marine Mechanic III, Navatek Ltd. John joined the company in 1996 as diesel mechanic. John served as the chief engineer on the Navatek II, Seaflyer, Slice, Midfoll, and Foilcat. John previously served for 24 years in the US Navy as a Chief Engineman. John is also PADI certified as a Dive Master. John is also certified as a Duty Designated Engineer with the USCG for unlimited horsepower.

Arnold Manzano, Marine Mechanic II, Navatek Ltd. Arnold joined the company in 2006 as a diesel and an outboard mechanic. Arnold is our chief outboard mechanic, and he also provides us with support on our larger diesel powered vessels. Arnold previously worked for Atlantis Submarines as their lead mechanic between 2001 and 2008. Arnold is also PADI certified as a Rescue Diver.

Dell Agricola, Marine Mechanic I, Navatek Ltd. Dell joined the company in 2005 as a diesel mechanic and a welder. Dell has provided us with support on long range charters in the past. He previously worked for Pacific Shipyards International as a welder and a competent person. Dell is a very experienced free diver, and he has competed in multiple spear fishing tournaments.

Mark Hoppis, Electrician, Navatek Ltd. Mark joined the company in 2001 as a marine electrician. Mark is also an excellent deckhand, and he has crewed many of our vessels in the past. Mark enjoys spending time on the water, especially fishing is involved.

Navatek TLB-Cat



Navatek's 45' Tandem Lifting Body Catamaran was initially built in 2010 to demonstrate the application of tandem lifting body concept to a multihull vessel. The TLB-Cat has demonstrated excellent motions in high sea states and provides exceptional efficiency due to the reduced drag afforded by the lifting bodies. Combined with Navatek ARES (Adaptive Ride Enhancement system) the TLB-Cat is a stable working platform with a large enclosed cabin and ample space to accommodate a large group of passengers or crew.

PERFORMANCE:

Speed Maximum	27 kts
Cruise Speed	20 kts
Maximum Time at Sea.....	5 Days

GENERAL DIMENSIONS:

Length Overall	45' 6"
Beam Overall	20' 6"
Draft (Full Load)	4' 2"
Displacement at Full Load	16 LT

PROPULSION AND AUXILIARIES:

Main engines x2	Yanmar 370 hp
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TANK CAPACITIES:

Fuel	360 Gallons
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Navatek BLB-65



Navatek's bow lifting body (BLB) hull form achieved the greatest combination of efficiency, sea keeping, and cost of any Navatek lifting body. Official Navy trials were conducted aboard the BLB-70 in 2007. Their subjective assessment stated: "*most impressive was the smoothness and stability of the ride...*" and "*...the active system was highly effective in reducing the amount of severity of impacts and motions.*" In 2008, the BLB-70 was modified to become the **BLB-65**. Its waterline length was shortened slightly, and Navatek installed its new, dihedral bow lifting body with trailing edge flaps. The vessel provides a stable platform from which to conduct at sea operations, a weather proof helm station and long range capabilities.

PERFORMANCE:

Speed Maximum 40 kts
Cruise Speed 25 kts
Maximum Time at Sea..... 5 Days

GENERAL DIMENSIONS:

Length Overall 64' 9"
Beam Overall 18' 11"
Draft (Full Load) 5' 3"
Displacement at Full Load 29LT

PROPULSION AND AUXILIARIES:

Main engines x 2 CAT C-12 704 hp

TANK CAPACITIES:

Fuel 1000 Gallons

Navatek Aronow-40



Navatek first demonstrated the aft lifting body-integrated propulsion pod (ALB/IPP) concept in 2006, installing an ALB/IPP unit with a Navatek ARES adaptive ride enhancement system on a commercial, Don Aronow-designed, 40-foot, high-speed catamaran to validate the benefits of a podded propulsor shaped as a lifting body. Navatek has demonstrated that an aft lifting body (ALB) can significantly enhance motion control across a wide speed range, and is applicable to vessels ranging from small craft to large ships. ALBs can be used on conventional monohulls or multi-hulls as well as advanced hull forms. Installed on small craft, an ALB can reduce vertical accelerations by 50 percent and slamming to an even greater extent. Because the ALB adds damping to the boat, it noticeably reduces zero speed motions in waves. Installed on monohull small craft, roll motions are reduced by a factor of three. This damping effect results in the Aronow-40 being a comfortable work platform for station keeping or while in transit.

PERFORMANCE:

Speed Maximum	35 kts
Cruise Speed	26 kts
Maximum Time at Sea.....	2 Days

GENERAL DIMENSIONS:

Length Overall	41' 6"
Beam Overall	11' 7"
Draft (Full Load)	4' 2"
Displacement at Full Load	8 LT

PROPULSION AND AUXILIARIES:

Main engines x2	Yamaha 300 hp
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TANK CAPACITIES:

Fuel	110 Gallons
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Navatek *Bladerunner-35*



Navatek's ETM ® Bladerunner-35 RIB, developed in 2006, is optimized for very high speed. It features a multi-stepped hull and ventilated tunnel for air entrapment. It is a militarized version of ICE Marine's successful commercial Bladerunner-34 sport boat. The 35-foot "Mosquito" has a 9.5 foot beam, twin 300 HP outboards, and can carry 14 persons (a 12 man boarding party plus 2 crew) at a top speed of 44 knots (60 knots light load). Design features include:

- Superior stability and seakindliness in open ocean waves at all speed ranges (including zero/loiter speed)
- Shallow draft (21 inches) for near shore operations
- Wider gunwales and walk-around deck for safer boarding operations
- Hybrid inflatable/foam collar for safer alongside fendering
- High-strength, low maintenance, carbon-reinforced composite hull
- Reduced fuel costs/extended range due to low-drag hull form

PERFORMANCE:

Speed Maximum	60 kts
Cruise Speed	35 kts
Maximum Time at Sea.....	2 Days

GENERAL DIMENSIONS:

Length Overall	35' 6"
Beam Overall	20'6"
Draft (Full Load)	21"
Displacement at Full Load	4 LT

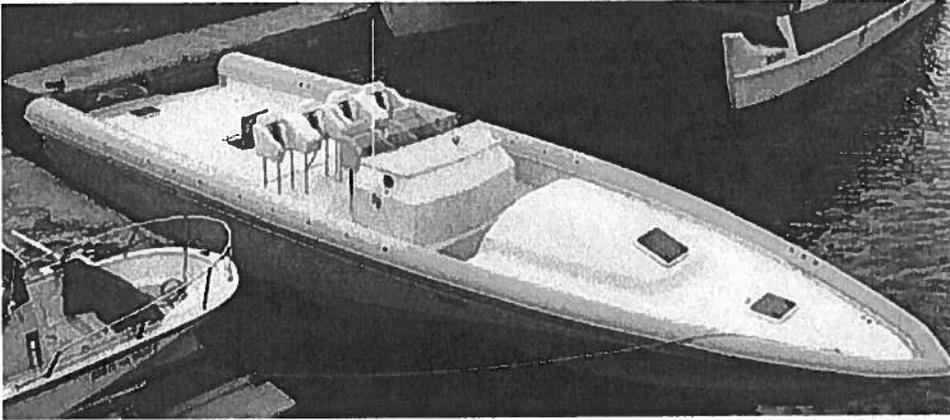
PROPULSION AND AUXILIARIES:

Main engines x2	300 HP
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TANK CAPACITIES:

Fuel	160 Gallons
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Navatek *Bladerunner-51*



ICE Marine pioneered Bladerunner technology starting in 1975, and has built 34 foot sport/recreational boats. In 2003, Navatek teamed with ICE Marine to develop commercial and military craft incorporating Bladerunner technology. These include the BR-35 "Mosquito" RIB interdiction/boarding boat; and the BR-51 hull form. In Aug. 2005, a sports version of the BR-51, the *Bradstone Challenger*, set a new Round-Britain world speed record. It has been tested to speeds of greater than 70 knots. Navatek's Bladerunner 51RIB offers a large open deck that is reconfigurable to accommodate operation specific goals.

PERFORMANCE:

Speed Maximum	55 kts
Cruise Speed	30 kts
Maximum Time at Sea.....	3 Days

GENERAL DIMENSIONS:

Length Overall	51'
Beam Overall	16' 6"
Draft (Full Load)	4' 9"
Displacement at Full Load	18 LT

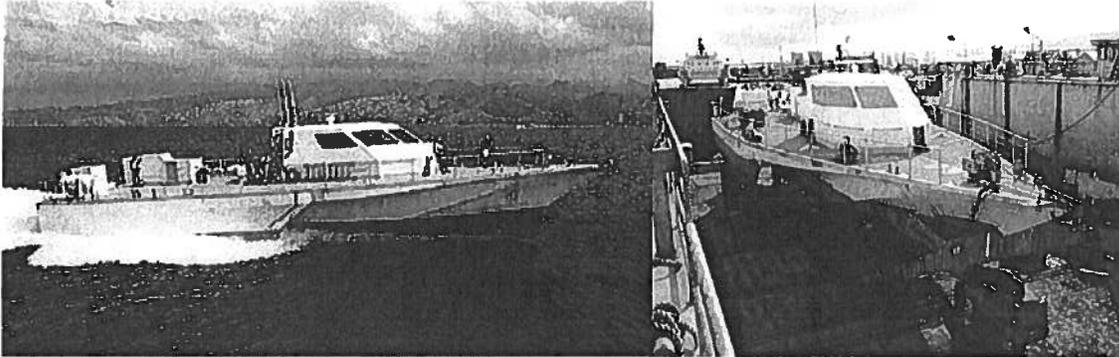
PROPULSION AND AUXILIARIES:

Main engines	2 x Yanmar 440 hp 1 x CAT 1000 Hp
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TANK CAPACITIES:

Fuel	1000 Gallons
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Navatek HDV-100



The HDV-100 ship features an anti-slamming, deep-vee monohull as the parent hull, mated to a Navatek experimental "blended-wing" lifting body. The HDV-100 initially operated without a lifting body allowing Navatek to conduct additional research on large deep-vee hullforms. The lifting body was installed in Fall 2005 and sea trials were conducted in 2006, proving the feasibility of installing underwater lifting bodies on monohulls as well as catamaran hull forms. Navatek currently operates the HDV-100 as a technology test bed. It is an extremely stable platform and has long range capability.

PERFORMANCE:

Speed Maximum 40 kts
 Cruise Speed 25 kts
 Maximum Time At Sea..... 14 Days

GENERAL DIMENSIONS:

Length Overall 94.5'
 Beam Overall 34.1'
 Draft (Full Load) 12.1'
 Displacement at Full Load 130LT

PROPULSION AND AUXILIARIES:

Main engines x 4 MTU 16V 2000

TANK CAPACITIES:

Fuel 4000 Gallons

V. Personnel: Project Organization and Staffing

A. Proposed Staffing, Staff Qualifications, Supervision and Training

The applicant shall describe the proposed staffing pattern and proposed service capacity appropriate for the viability of the request. The applicant shall provide the qualifications and experience of personnel for the request and shall describe its ability to supervise, train and provide administrative direction relative to the request.

The staffing will be allocated over the term of project consistent with the Scope of Work and the tasks. Technical and program staff will be involved in the first month establishing the plan and procedures. Vessel operating crew and observers will be involved during the 8 month long survey phase. Technical staff will conduct data reduction and report generation. Finally, management staff will oversee the project and support all phases of task activity.

Please see attached sheets which detail the staff experience and qualification.

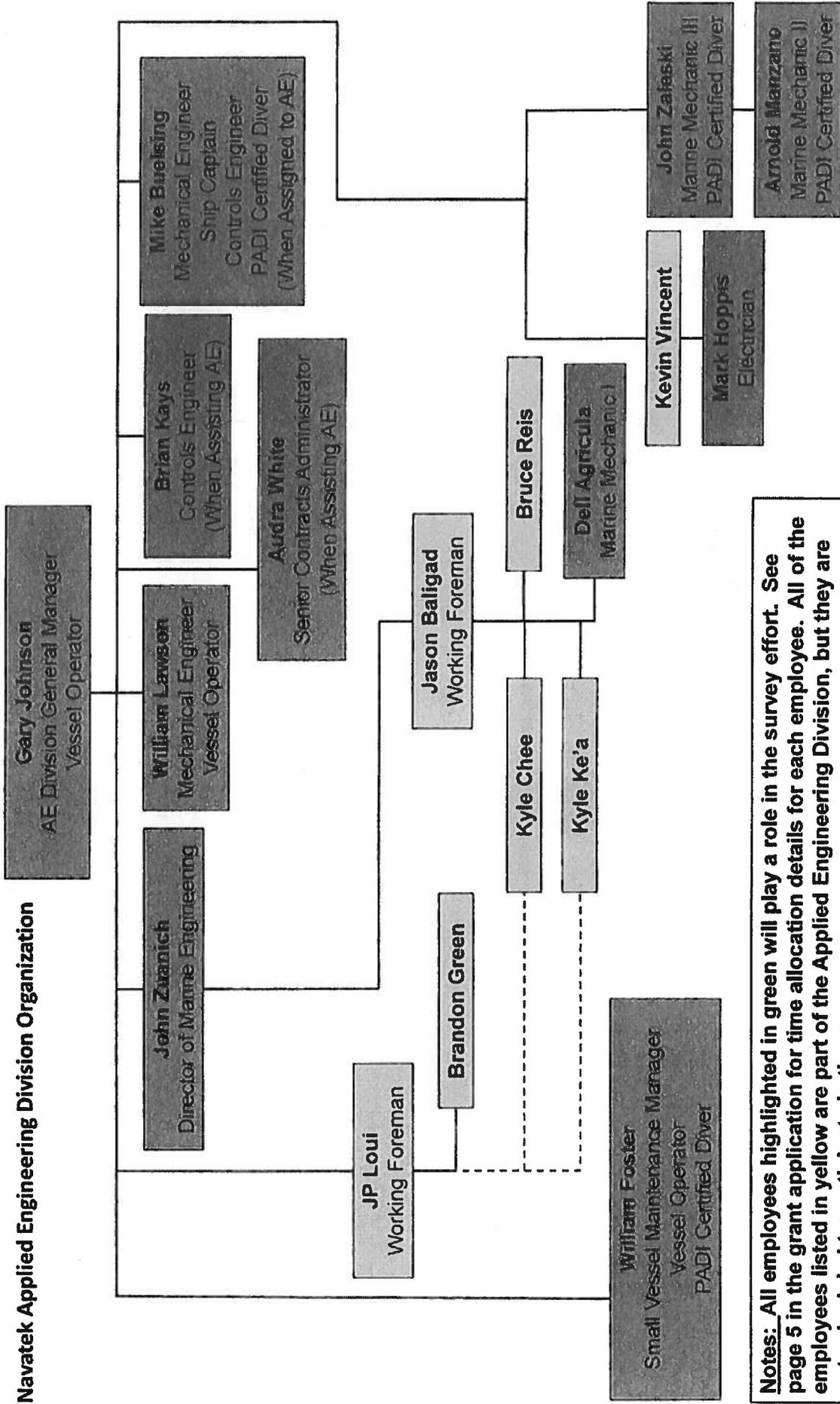
Navatek regularly conducts large scale project operations for research and technical design and engineering. Project value ranges from \$50,000 to \$25,000,000. Staffing levels range from 1 to 50. Project terms range from 1 month to 3 years or more. Navatek has never been debarred, cited or restricted in any manner from participating in State, Federal, or other agency bid, procurement or competitive solicitations. Navatek has contracted with numerous State and Federal agencies including HI St. DOT, US Navy, US Air Force, US SOCOM and others.

B. Organization Chart

The applicant shall illustrate the position of each staff and line of responsibility/supervision. If the request is part of a large, multi-purpose organization, include an organizational chart that illustrates the placement of this request.

Please see attached organization chart following this section:

Navatek Applied Engineering Division Organization



Notes: All employees highlighted in green will play a role in the survey effort. See page 5 in the grant application for time allocation details for each employee. All of the employees listed in yellow are part of the Applied Engineering Division, but they are not scheduled to participate in the survey.

VI. Other

A. Litigation

The applicant shall disclose any pending litigation to which they are a party, including the disclosure of any outstanding judgement. If applicable, please explain.

There is no litigation pending with Navatek.

B. Licensure or Accreditation

Specify any special qualifications, including but not limited to licensure or accreditation that applicant possesses relevant to this request.

Please also refer to experience descriptions.

Staff includes personnel with the following licensure/accreditation:

- Hawaii St. Professional Engineer
- USCG Ocean Operator's License
- Honolulu City & County Lifeguard Certification
- CPR
- PADI Scuba Certifications including; Master Diver and Rescue Diver

**DECLARATION STATEMENT OF
APPLICANTS FOR GRANTS AND SUBSIDIES PURSUANT TO
CHAPTER 42F, HAWAII REVISIED STATUTES**

The undersigned authorized representative of the applicant certifies the following:

- 1) The applicant meets and will comply with all of the following standards for the award of grants and subsidies pursuant to Section 42F-103, Hawaii Revised Statutes:
 - a) Is licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which a grant or subsidy is awarded;
 - b) Complies with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability;
 - c) Agrees not to use state funds for entertainment or lobbying activities; and
 - d) Allows the state agency to which funds for the grant or subsidy were appropriated for expenditure, legislative committees and their staff, and the auditor full access to their records, reports, files, and other related documents and information for purposes of monitoring, measuring the effectiveness, and ensuring the proper expenditure of the grant or subsidy.
- 2) The applicant meets the following requirements pursuant to Section 42F-103, Hawaii Revised Statutes:
 - a) Is incorporated under the laws of the State; and
 - b) Has bylaws or policies that describe the manner in which the activities or services for which a grant or subsidy is awarded shall be conducted or provided.
- 3) If the applicant is a non-profit organization, it meets the following requirements pursuant to Section 42F-103, Hawaii Revised Statutes:
 - a) Is determined and designated to be a non-profit organization by the Internal Revenue Service; and
 - b) Has a governing board whose members have no material conflict of interest and serve without compensation.

Pursuant to Section 42F-103, Hawaii Revised Statutes, for grants or subsidies used for the acquisition of land, when the organization discontinues the activities or services on the land acquired for which the grant or subsidy was awarded and disposes of the land in fee simple or by lease, the organization shall negotiate with the expending agency for a lump sum or installment repayment to the State of the amount of the grant or subsidy used for the acquisition of the land.

Further, the undersigned authorized representative certifies that this statement is true and correct to the best of the applicant's knowledge.

Michael Schmicker /Navatek
(Typed Name of Individual or Organization)

Michael Schmicker (Signature) 1-31-13 (Date)

Michael Schmicker (Typed Name) VP Corporate Communications (Title)



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

October 11, 2013

Ms. Ann Chung
Director of Special Projects
Navatek, Ltd.
841 Bishop Street, Suite 1110
Honolulu, Hawaii 96813

Dear Ms. Chung:

I am pleased to inform you that I am releasing operating funds, as appropriated by Act 134, SLH 2013, for Navatek, Ltd. to conduct a survey of ocean recreation activities in the South Oahu ocean recreation management area to identify potential safety/liability issues emerging from new trends in water sports activities. Although the General Appropriations Act of 2013 appropriates \$250,000 in general funds, I am releasing \$237,500 in general funds to reflect the 5% contingency reserve restriction imposed on all State discretionary general funds for FY 14.

The Division of Boating and Ocean Recreation (DOBOR) in the Department of Land and Natural Resources, which is the expending agency for the grant, will be working with your organization to develop the scope and terms of the contract. Please contact DOBOR to facilitate the release of funds.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil Abercrombie".

NEIL ABERCROMBIE
Governor, State of Hawaii

c: Honorable William J. Aila, Jr.

EXHIBIT C