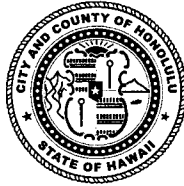


DEPARTMENT OF BUDGET AND FISCAL SERVICES
KA 'OIHANA MĀLAMA MO'OHĒLU A KĀLĀ
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
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RICK BLANGIARDI
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MEIA



ANDREW T. KAWANO
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PO'O

CARRIE CASTLE
DEPUTY DIRECTOR
HOPE PO'O

July 1, 2024

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kanoelani B. Perry, President
All Island Wreckers, Inc.
98-320 Moanalua Road, Unit 15-1, Suite 328
Aiea, Hawaii 96701

Dear Ms. Perry:

Re: Contract No. MA-CSD-2300062
NOTICE OF DEFAULT AND DEMAND FOR CURE

Pursuant to Section 3.15 of the General Terms and Conditions of the City and County of Honolulu (February 1, 2015) (GTCs), the City and County of Honolulu (City) hereby notifies All Island Wreckers, Inc. (All Island) that it is in default with respect to Contract No. MA-CSD-2300062 (Contract).

On June 28, 2023, pursuant to its authority under the Contract, the Department of Customer Services (CSD) initiated an investigation and audit into complaints that All Island misapplied and overcharged registered owners (ROs) the Non-Statutory and Difficult Hook Up (NSDHU) fee specified in Appendix A, Section II.A(1)(e) of the Contract. As you are aware, the proper application of the NSDHU fees is solely determined by the City. The Contract states, "The CITY shall be the sole judge of approving or disapproving" the NSDHU fees. *Id.*

Towing charges are specified in Hawaii Revised Statutes (HRS) § 290-11(b) with the exception of HRS § 291C-165.5(b) which states, "[T]ow operators may charge additional reasonable amounts for excavating vehicles from off-road locations[.]" The NSDHUs fee allows All Island to charge "reasonable amounts for excavating vehicles from off-road locations." As stated in the Contract, NSDHUs include "[the] use of multiple tow vehicles, recovery from hazardous location such as off-road, ravines, streams, shorelines, and canals." See Appendix A, Section II.A(1)(e). While the

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Contract allows All Island to charge NSDHUs up to \$900.00 per 15 minutes (after an initial 15 minute period), NSDHUs fees are nonetheless statutorily limited to reasonable amounts and to off-road tows per HRS § 291C-165.5.¹

Upon completion of CSD's investigation and audit of the invoices produced by All Island, CSD determined that 782 invoices either misapplied and/or overcharged the NSDHUs fees. The CSD Director's letter dated July 1, 2024 is incorporated herein by reference. All Island's repeated misapplication and overcharging of the NSDHUs fees which amount to SIX HUNDRED FIFTY-SIX THOUSAND ONE HUNDRED SEVENTY-FIVE AND 50/100 DOLLARS (\$656,175.50) to ROs constitute an egregious breach of the Contract and warrants immediate default under Section 3.15 of the GTCs.

In addition to, but independent of the above, All Island also failed and/or refused to comply with CSD's order to accept three separate forms of payment, either cash, credit card or debit card. By All Island's own admission, and despite CSD's instruction, All Island fails and/or refuses to acknowledge this statutory requirement and sought only cash payments from ROs seeking possession of their vehicles. All Island's failure to comply with the orders of the officer-in-charge is grounds for default pursuant to Section 6.2(3) of the GTCs.

Pursuant to Section 3.15 of the GTCs, All Island has ten (10) calendar days from the date of this letter to cure the above defaults. Per Appendix A, Section II.H(3) and Appendix D, Section X of the Contract, the appropriate and required cure for misapplying and overcharging the NSDHU fees is (1) the submission of a detailed plan that is satisfactory to the City setting forth the manner and process to refund those affected ROs or those who issued payments on behalf of the ROs; (2) All Island's funding, in full, of the refunds owed; (3) All Island's full cooperation with the City relating to the issuance of the refunds, including timely production of any and all information and/or documentation needed to facilitate the refunds; and (4) any and all other action deemed necessary by the City to correct the aforementioned default. All Island is encouraged to immediately contact CSD to discuss the cure requirements outlined above.

¹ Section 2.14 of the GTCs states, "The Contractor shall at all times observe, perform, and comply with all federal, state and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the performance of the work... required under the contract[.]" Appendix A, Section III, Paragraph L of the Contract has a similar requirement – Compliance with Laws, Statutes, Ordinances, Regulations.

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In addition, pursuant to Section 3.15(3) of the GTCs, the City is withholding payments due to All Island to protect the City against claims flowing from All Island's egregious breach of the Contract. The City is also assessing liquidated damages pursuant to Sections VII(b) and X of Appendix D in the amount of \$100 per violation, i.e., disapproved invoice.

Finally, if All Island fails or refuses to cure the above defaults within ten (10) days, the City reserves the right to assert any and all legal and equitable claims permitted by law and/or by the Contract, including but not limited to suspension and debarment proceedings pursuant to Appendix D, Section XII.

Sincerely,



Andrew T. Kawano
Director

cc: CSD Administration Division
Corporation Counsel