The purpose of this memorandum is to provide an update for the Hilo Lane Stormwater Retrofit Improvements project.

**Project Update**

The first phase of construction was completed in the spring of 2016, with numerous construction inspection visits taking place between late May and late June.

Following the first phase of construction, an intermediate punchlist inspection took place in advance of the Contractor submitting its first payment application and leaving the project area until the second phase of construction would begin in early winter of 2016. The punchlist included notable items such as poor surface restoration and lack of vegetation. The Contractor appeared to address these items in early July.

A punchlist is an inspection report prepared near the end (or at milestones) of a construction project identifying work not conforming to the plans & specifications that the contractor must complete prior to payment. The punchlist work may include incomplete or incorrect installation.

After the first punchlist items were completed, the Contractor submitted its second payment application. To verify the items requested for payment, a second intermediate punchlist inspection took place. During this visit the Engineer once again observed inadequate establishment of vegetation. In addition, inadequate topsoil depth and quality was observed. These insufficiencies were brought to the Contractor’s attention, as well as several concerns about questionable quantities on the second payment application. A site meeting took place in early September, where the Contractor, Engineer, and District discussed the poor restoration and vegetation, as well as the second payment application.

Following this meeting, the punchlist was distributed to the Contractor and it was asked to notify the Engineer and District when repairs were scheduled. To date, the Contractor has not notified the Engineer or District when repairs will take place nor has it provided additional information to appropriately review and approve the second payment application.

At this point, the Contractor’s lack of attention to detail is concerning when it comes to the remaining work items, mainly the construction of the iron-sand filter pond retrofit, which requires care in technique. Without the engineer being on site the entire time the Contractor is working, there is not great confidence the project will be completed per the plans & specifications.
**Next Steps**

At this time, we recommend that the Board of Managers authorize the District Administrator to terminate the Contractor’s agreement with the District and retain another contractor to complete the work. Because the work that remains is below the cost threshold specified by law, a sealed bid process is not necessary and the District may obtain a new contractor through a competitive quote process. This will be more efficient than a bid solicitation and also will allow the District to seek specific experience in the installation of iron enhanced sand filters. However, contract termination will involve additional cost.

The contract allows the District to terminate without cause as follows:

*Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

Pursuant to this framework, costs to the District that it would not incur if the Contractor were to complete the work may include the following: *(a)* new performance & payment bonds; *(b)* additional mobilization / demobilization expenses; *(c)* sustained expenses for equipment or materials that cannot be used by a new contractor, e.g., these may include rented equipment for installing the iron sand filter, and vegetation & erosion control supplies that a new contractor would likely want to purchase new; *(d)* current subcontractor commitments, e.g., the Contractor is using the services of a subcontractor to complete seeding and erosion & sediment control work items, there may be certain obligations to that subcontractor that need to be fulfilled.

It is anticipated the remaining work will take 3 to 4 weeks, with the actual time the Contractor spends on site lasting approximately 1 to 2 weeks. Based on our experience thus far with the Contractor,
additional engineering and staff time for the project could be substantial to provide additional oversight and to deal with problems with materials and/or installation. Between more hours for construction oversight during critical phases and addition contract management, this could easily amount to at least 40-80 additional hours of engineering.

In summary, there are costs the District will incur by proceeding with a new contractor that it would not otherwise have incurred. However, certain work items paid for but not yet incorporated into the work should not be a loss because the District will take ownership of these items and incorporate them into the work through the new contractor. But, by completing the work with the current Contractor additional engineering oversight will be necessary.

To move forward with a new contractor, there will be additional costs to the “new” items (a through d) noted above. There will be additional staff, Engineer and attorney costs to carry out the termination and retain a new contractor. The outstanding pay items will need to be determined, a new scope of services based on the remaining work will need to be assembled, and a quote solicitation package will need to be prepared & distributed. New engineering oversight will also be necessary; however selectively choosing a new contractor should reduce construction oversight time needed.

In administering the termination, the District administrator will work with the Engineer to determine the amount due for outstanding pay items.

A separate matter concerns the present site condition. Additional work is needed for proper restoration and vegetation establishment in the form of adequate topsoil and seed & mulch or blanket. The District can provide formal notice to the current Contractor to address these requirements and, if the Contractor does not do so, the District can otherwise provide for the work and deduct the cost from the final amount due the Contractor. If the District prefers the greater control of simply doing the work itself, it can do so but may not be able to offset the cost. We estimate the cost for this work will be about $4500.