

1 **ARTICLE IV - SCOPE OF WORK**

2
3 **4.1 Intent of Contract, Duty of Contractor.** The intent of the contract is to
4 provide for the construction, complete in every detail, of the work described by
5 the contract documents at the accepted bid price and within the time established
6 by the contract. The Contractor has the duty to furnish all labor, materials,
7 equipment, tools, transportation, incidentals, and supplies and to determine the
8 means, methods, and schedules required to complete the work in accordance
9 with the contract documents.
10

11 **4.2 Changes.** The Engineer may at any time after execution of contract, by
12 written order and without notice to the sureties, make changes in the work found
13 to be necessary or desirable. Such changes shall not invalidate the contract nor
14 release the surety, and the Contractor will perform the work as changed, as
15 though it had been a part of the original contract.
16

17 **(a) Minor Changes.** The Engineer may direct minor changes in the
18 work with no changes in contract price or contract time of performance. If
19 the Contractor believes a minor change directive justifies an increase in
20 contract price or contract time it must follow the oral and written notice
21 requirements set forth in Subsection 4.2(b) Orders and Directives.
22

23 **(b) Orders and Directives.** Except for minor change directives
24 referred to in Subsection (a) above, only a duly issued change order or
25 field order may alter the contract and work requirements. Any order,
26 direction, instruction, interpretation, or determination, from the Engineer or
27 any other person, that is not a field order or change order may be
28 considered as a compensable change only if the Contractor gives the
29 Engineer an oral notice not later than noon of the following working day of
30 its intent to treat such order, direction, instruction, interpretation, or
31 determination as a change directive. Such notice must be given before

32 the Contractor acts in conformity with the order, direction, instruction,
33 interpretation, or determination. The oral notice shall be followed by a
34 written notice of a potential claim that must be delivered to the Engineer
35 within five days after communication of the order, direction, instruction,
36 interpretation, or determination to the Contractor. The written notice of a
37 potential claim shall state the date, circumstances, source of the order,
38 direction, instruction, interpretation, or determination that the Contractor
39 regards as a compensable change and provide a detailed justification for
40 additional payment or time. Such written notice may not be waived and
41 shall be a condition precedent to the filing of any claim by the Contractor.
42 Unless the Contractor acts in accordance with this procedure, any such
43 order, direction, instruction, interpretation, or determination shall not be
44 treated as a change for which the Contractor may make a claim for an
45 increase in the contract time, compensation, or contract price related to
46 such work.

47

48 No more than ten working days after receipt of the written notice of
49 a potential claim from the Contractor, a written response shall be issued
50 for the subject work if the State agrees that it constitutes a change. The
51 Contractor shall deem it a rejection of its potential claim if a written
52 response is not issued in the time established. If the Contractor objects to
53 the Engineer's position, it shall file a written claim with the Engineer within
54 30 days after delivery to the Engineer of the Contractor's written notice of
55 a potential claim. Failure by the Contractor to submit a written notice of a
56 potential claim in the time specified waives all rights for an increase in
57 contract time or compensation related to such work. The claim shall be
58 determined as provided in Section 7.16 Disputes and Claims. In all cases,
59 the Contractor shall proceed with the work as specified in the order,
60 direction, instruction, interpretation, or determination immediately upon
61 providing the Engineer with the oral notice described above, unless
62 otherwise directed in writing by the Engineer.

63

64 **(c) Penal Sum of the Surety Performance and Payment Bonds.**

65 The penal sum of the surety performance and payment bonds will be
66 adjusted by the amount of each and every contract change order.

67

68 **4.3 Field Orders.** Upon receipt of the field order, the Contractor shall
69 proceed with the work as changed by the field order without delay. If the
70 Contractor does not agree with any of the terms or conditions or the adjustment
71 or nonadjustment to the contract price, contract time, or both, set forth therein,
72 the Contractor shall file a written notice of potential claim with the Engineer not
73 later than five days after receipt of the field order. No more than ten working
74 days after receipt of the written notice of a potential claim from the Contractor, a
75 written response shall be issued for the subject work if the State agrees that it
76 constitutes a change. The Contractor shall deem it a rejection of its potential
77 claim if a written response is not issued in the time established. If the Contractor
78 objects to the Engineer's position, it shall file a written claim with the Engineer
79 within 30 days after delivery to the Engineer of the Contractor's written notice of a
80 potential claim. Failure to file the written notice of a potential claim or to protest
81 any portion(s) of the field order by the time specified shall constitute agreement
82 on the part of the Contractor with all the terms, conditions, amounts and
83 adjustment or non-adjustment to contract price, contract time, or both, set forth in
84 the field order or the non-protested portion of the field order. Timely written
85 notice shall be a non-waivable condition precedent to the assertion of a claim.

86

87 **4.4 Duty of Contractor to Provide Change Proposals.** A field order may
88 request the Contractor supply the Engineer with a detailed proposal for an
89 adjustment to the contract price, contract time, or both, for the work described
90 therein. Any such request for a proposal shall not affect the duty of the
91 Contractor to proceed as ordered with the work described in the field order.

92

93 At any time without the issuance of a field order, the Engineer may
94 request the Contractor supply the Engineer with a detailed proposal for an
95 adjustment to the contract price, contract time, or both, for contemplated changes

96 in the work. The request for change proposal is not a directive for the Contractor
97 to perform the work described therein.

98

99 The Contractor shall submit a detailed written proposal in a time span
100 allowed by the Engineer; however, if a time span is not stated by the Engineer, it
101 shall be within 15 days after receipt of a request for change proposal or field
102 order containing a request for proposal. The format shall set forth all charges the
103 Contractor proposes for the change and a detailed justification for the proposed
104 adjustment of the contract time, all properly itemized and supported by sufficient
105 substantiating data to permit evaluation. The proposal shall be certified by the
106 Contractor as accurate, complete, and current. The Engineer will determine
107 whether the proposal is acceptable.

108

109 Unless otherwise authorized by the Engineer in writing, no payment shall
110 be allowed to Contractor for cost incurred for pricing, negotiating, and
111 researching for proposed or actual changes or designing of construction means
112 and methods for proposed or actual changes. No time extensions will be granted
113 for delay caused by late Contractor pricing of changes or proposed changes or
114 time spent in negotiation.

115

116 The Engineer may accept the entire proposal, any discrete cost item
117 contained within the proposal, or the proposed adjustment to contract time by a
118 notice in writing to the Contractor delivered to the Contractor within 30 days after
119 receipt of the proposal. The written acceptance by the Engineer of all or part of
120 the Contractor's proposal shall create a binding agreement between the parties
121 for that aspect of the change.

122

123 If the Engineer refuses to accept the Contractor's entire proposal, the
124 Engineer may issue a field order for all or part of the proposed work. If a field
125 order has already been issued, the Engineer may issue a supplemental field
126 order establishing new contract prices and further adjudgments to contract price
127 and/or contract time for the ordered changes. If the Contractor disagrees with

128 any term, condition, or adjustment contained in such field order or supplemental
129 field order, it shall follow the protest procedures set forth in and be subject to the
130 other terms of Section 4.3 Field Orders.

131

132 **4.5 Contract Change Orders.** The Engineer will issue contract change
133 orders when it deems appropriate during the contract period. Such change
134 orders shall be a signed writing designated or indicated thereon to be a change
135 order. A contract change order may contain the adjustment(s) in contract price,
136 as described in Section 4.6 Methods of Price Adjustment, modification(s) in
137 contract time, as described in Section 8.5 Contract Time, or both, for a number of
138 field orders. In all cases, the Contractor shall proceed with the work as changed
139 by the contract change order. No payment for any changes will be made until the
140 contract change order is issued. If the Contractor does not agree with any of the
141 terms or conditions of the adjustment or nonadjustment to either the contract
142 price or contract time set forth therein, the Contractor shall file a written notice of
143 potential claim with the Engineer not later than five days after receipt of the
144 contract change order.

145

146 **4.6 Methods of Price Adjustment.**

147

148 (a) Any adjustment in the contract price pursuant to a change or claim
149 shall be made in one or more of the following ways:

150

151 (1) By written agreement on a fixed price adjustment before
152 commencement of the pertinent performance or as soon thereafter
153 as practicable.

154

155 (2) By unit prices or other price adjustments specified in the
156 contract or subsequently agreed upon before commencement of
157 the pertinent performance.

158

159 **(3)** The Engineer may base the adjustment for a lump sum item
160 on a calculated proportionate unit price. The Engineer will calculate
161 the proportionate unit price by dividing the original contract lump
162 sum price by the actual or original estimated quantity established
163 by the contract documents.

164
165 **(4)** In such other lawful manner as the parties may mutually
166 agree.

167
168 **(5)** At the sole option of the Engineer, work may be paid for on a
169 force account basis in accordance with Section 9.6 Force Account
170 Provisions and Compensation. However, for all change orders with
171 a reasonably calculated value not exceeding \$50,000, payment
172 shall be made on a force account basis.

173
174 **(6)** By determination by the Engineer of the reasonable and
175 necessary costs attributed to the event or situation caused by the
176 change, plus appropriate profit or fee, all computed by the generally
177 accepted accounting principles and applicable sections of Chapters
178 3-123 and 3-126, H.A.R., and using Section 9.5 Allowances for
179 Overhead and Profit herein, as the method for calculating overhead
180 and profit.

181
182 **(b)** The Contractor will not be compensated for loss of anticipated
183 profits on deleted work.

184
185 **4.7 Variations in Estimated Quantities.** Where the quantity of a unit price
186 item in this contract is estimated on the proposal schedule and where the actual
187 quantity of such pay item varies more than 15 percent above or below the
188 estimated quantity stated in this contract, an adjustment in the contract price
189 shall be made upon demand of either party, providing the following conditions are
190 met:

191 (1) The adjustment shall be limited to any increase or decrease
192 in direct costs; and

193

194 (2) Such increase or decrease in costs is due solely to the
195 variation above 115 percent or below 85 percent of the estimated
196 quantity. The adjustment shall be limited to any increase or
197 decrease in direct costs due solely to the variation above 115
198 percent or below 85 percent of the estimated quantity. The
199 adjustment shall be subject to Section 4.6 Methods of Price
200 Adjustment and Section 9.5 Allowances for Overhead and Profit.

201

202 **4.8 Differing Site Conditions.** The Contractor shall promptly and before
203 such conditions are disturbed, notify the Engineer of:

204

205 (1) Subsurface or latent physical conditions at the site differing
206 materially from those indicated in this contract; or

207

208 (2) Unknown physical conditions at the site of an unusual
209 nature, which differ materially from those ordinarily encountered
210 and generally recognized as inherent in work of the character
211 provided for in this contract.

212

213 **(a) Timeliness of Notice.** No claim of the Contractor for any
214 adjustment for contract price or contract time under this subsection shall
215 be allowed unless the Contractor gives both:

216

217 (1) A verbal notice within 12 hours of discovery or by 10 A.M. of
218 the next working day, whichever is later, of the differing site
219 condition; and

220

221 (2) Written notification of a potential claim to the Engineer no
222 later than 5 days after the discovery of the differing site condition.

223

224 The Engineer, in writing, may extend the time prescribed in this
225 subsection for giving verbal and written notice. The notices to the
226 Engineer are non-waivable conditions precedent to any claim under this
227 section.

228

229 **(b) Adjustments of Price or Time.** After receipt of the notice, the
230 Engineer shall promptly investigate the site and if it is found that the
231 conditions do materially differ and so cause an increase in the
232 Contractor's cost of or the time required for performance of any part of the
233 work under this contract, whether or not changed as a result of the
234 conditions, an equitable adjustment will be made and the contract
235 modified by contract change order. Any such adjustment in contract price
236 or contract time shall be determined in accordance with the relevant
237 adjustment subsections of this contract.

238

239 **(c) No Claim After Final Payment.** No claim by the Contractor
240 for additional cost or time to the contract shall be allowed if asserted after
241 final payment under this contract.

242

243 **(d) Knowledge.** Nothing contained in this subsection shall be
244 grounds for an adjustment in contract price or contract time if the
245 Contractor had knowledge of the existence of such conditions prior to the
246 submission of the bids.

247

248 **4.9 Maintenance of Traffic.**

249

250 **(a) Roadway and Pedestrian Traffic.** The Contractor shall keep all
251 roads and necessary accesses within the working area open to all traffic
252 during the progress of the work or provide adequate detour roads as

253 specified or directed.

254

255 The Contractor shall plan and provide appropriate detours, signs,
256 flashers, personnel, warnings, barricades, and other devices for safely and
257 legally handling pedestrian, bicycle, and motor traffic. The Engineer may
258 direct additional measures to be undertaken by the Contractor at no cost
259 to the State when the Engineer determines the Contractor's measures are
260 inadequate or inappropriate.

261

262 All such protective facilities, precautions to be taken, and control of
263 traffic through the construction area shall conform and be in accordance
264 with the latest edition of the "Manual on Uniform Traffic Control Devices
265 for Streets and Highways", published by the U.S. Federal Highway
266 Administration and any amendments or revisions thereof as may be made
267 from time to time.

268

269 No material or equipment shall be stored where it will interfere with
270 the free and safe passage of public traffic. At the end of each day's work
271 or when construction operations are suspended for any reason, the
272 Contractor shall remove all obstructions to the free and safe passage of
273 public traffic.

274

275 **(b) Airport and Harbor Traffic.** The Contractor shall provide for the
276 free and unobstructed movement of aircrafts, vessels, passengers, aircraft
277 and vessel crews and service personnel, and equipment in the operations
278 area of the airport or harbor where the work is being performed to the
279 greatest extent possible. The Contractor shall provide for uninterrupted
280 operation of visual and electronic signals (including power supplies
281 thereto) used in the guidance of aircraft and vessels while operating to,
282 from, and upon the airport or harbor.

283

284 **4.10 Construction and Maintenance of Detours.** The Contractor shall con-
285 struct and maintain detours for the use, convenience, and safety of all traffic.
286 Unless indicated otherwise in the contract, all such work for the use,
287 convenience, and safety of all traffic shall be considered incidental to the work of
288 the various pay items of the contract and no additional payment will be allowed
289 therefor.

290

291 All detours and related signage shall be approved in writing by the
292 Engineer.

293

294 **4.11 Use of Explosives.** The use of explosives will not be permitted without
295 the expressed written permission of the Engineer and shall be in conformance
296 with all terms and conditions for their use set by the Engineer.

297

298 **4.12 Utilities and Services.**

299

300 **(a) Contractor's Duty to Coordinate Utility Work.** The Contractor
301 shall contact the Hawaii One Call Center prior to any planned excavation
302 and comply with all other requirements of 269E, H.R.S. In addition, the
303 Contractor shall contact and cooperate with each affected utility owner in
304 order for the work to progress on schedule and without unreasonable
305 disruption of such utility services. If the work calls for permanent utility
306 service installations or corrections to or modifications of existing utilities,
307 the Contractor is responsible for scheduling and coordinating such work
308 with appropriate utility owners. If the work required by the contract
309 documents conflicts with the instructions, demands, or requirements of a
310 utility owner, the Contractor shall notify the Engineer immediately. The
311 Contractor shall furnish the Engineer with evidence that the Contractor
312 has provided all relevant utility owners reasonable opportunity to review
313 the drawings.

314

315 When the State has a separate agreement with utility owners for
316 work to be performed within the worksite, at the direction of the Engineer,
317 the Contractor shall make available all portions of the work and the
318 worksite necessary for the utility owners to do their work.

319
320 The Contractor hereby holds the State harmless against all risks
321 arising from acts or omissions of utility owners that damage the work or
322 create delays, disruptions, and additional cost to the Contractor in the
323 performance of the work. Contract time may be extended in accordance
324 with Subsection 8.5(b) Modifications of Contract Time, on account of acts
325 and omissions of utility owners that delay the work without fault of the
326 Contractor.

327
328 Unless otherwise noted in the contract documents, the Contractor
329 may relocate or adjust the utility lines or service connections for its
330 convenience with the permission of the owner of the utility and the
331 Engineer, at no increase in contract price or contract time.

332
333 **(b) Contractor's Duty to Locate and Protect Utilities.** Before
334 beginning any work at the worksite, the Contractor shall:

335
336 **(1)** Ascertain and mark the exact location and depth of all
337 utilities within the project area including taking reasonable steps to
338 detect the existence and location of utilities not shown on the
339 drawings.

340
341 **(2)** Acquaint all personnel working near utilities with the type,
342 size, location, and depth of the utilities as well as the consequences
343 that might result from disturbances.

344

345 (3) Take reasonable steps to protect the utilities and prevent
346 service disruption.

347

348 **(c) Discovery of Unknown Utility; Damage to Utility.** Upon
349 discovery of a utility that was not shown to exist in the contract
350 documents, or is found at a location that is substantially different than
351 shown in the contract documents, the Contractor shall promptly notify the
352 Engineer before the utility and its surrounding area are further disturbed.
353 The Contractor shall be responsible for the safety and protection of the
354 public and the utility, subject to further direction from the Engineer.
355 Whenever the Contractor damages a utility or causes any interruption to
356 any utility service, the Contractor shall promptly notify the Engineer, the
357 affected utility owner, and the appropriate governmental authorities. The
358 Contractor shall cooperate with the affected utility owner and the
359 appropriate governmental authorities in the restoration of service. If the
360 damage is to a utility that is known or should have been discovered before
361 the damage occurred, the Contractor shall be responsible for all costs
362 associated with its repair and restoration of service, at no increase in
363 contract price or contract time.

364

365 **(d) Temporary Utilities During Construction.**

366

367 **(1) Water and Sanitation:** The Contractor shall provide
368 temporary drinking and sanitary facilities for the field personnel.
369 The facilities shall be in accordance with the applicable health
370 regulations and shall be maintained clean and operable until the
371 conclusion of the construction work.

372

373 **(2) Telephone:** The Contractor shall have a telephone available
374 for the State's use for communications with field personnel.
375 Cellular telephones are acceptable. The Contractor shall install the
376 telephone immediately upon starting work and maintain service until

377 the project is completed. All costs associated with obtaining and
378 maintaining telephone service shall be borne by the Contractor.

379

380 (3) Electricity: Contractor shall obtain or provide temporary
381 electric power and shall pay for all connections and energy charges
382 incurred during construction.

383

384 (4) Metering: Water and electrical services shall be metered
385 and payment for meters and services shall be borne by the
386 Contractor. Temporary connections for water shall include
387 installation of a meter and backflow preventer at the point of
388 connection according to State standards at the Contractor's cost.
389 The Contractor shall submit requests for temporary connections in
390 writing to the Engineer fourteen (14) calendar days prior to the
391 connection and shall include a description of work and a sketch of
392 the proposed installation.

393

394 **4.13 Illumination of Work.** When any work is performed at night or where
395 daylight is obscured, the Contractor shall, as part of the contract price, provide
396 artificial light sufficient to permit the work to be carried on efficiently,
397 satisfactorily and safely and to permit thorough inspection. Contractor shall
398 submit for review by the DOT a lighting plan that shall ensure conformance to all
399 federal and state laws and codes and regulations as well as to ensure all lighting
400 is shielded or fully cut off to prevent any illumination to the dark sky. Lighting
401 shall be installed so as not to cause glare or reflection to persons operating
402 aircraft, vessels, or other equipment at State Airports and Harbors or to traffic
403 controllers in any control tower or illumination to the dark sky. Access to the
404 place of work shall also be clearly illuminated under the same provisions. All
405 wiring for electric light and power shall be properly installed and maintained,
406 securely fastened in place, and shall be kept as far as possible from telephone

407 wires and signal wires. The DOT reserves the right to modify the plans,
408 equipment/fixtures as required.

409

410

END OF ARTICLE IV