

1 **ARTICLE V – CONTROL OF WORK**

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3 **5.1 Authority.**
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5 **(a) Authority of the Engineer.** The Engineer is the representative
6 of the Department who will make decisions on all questions that may arise
7 regarding the contract, such as, but not limited to:

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- 9 **(1)** Interpretation of the contract documents.
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 - 11 **(2)** Acceptability of the materials furnished and work performed.
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 - 13 **(3)** Manner of performance and rate of progress of the work.
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 - 15 **(4)** Acceptable fulfillment of the contract on the part of the
16 Contractor.
 - 17
 - 18 **(5)** Compensation under the contract.
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20 The Engineer's decisions on questions, claims, and disputes will be
21 final and conclusive subject to Section 7.16 Disputes and Claims.
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23 The Engineer may delegate specific authority to act for the
24 Engineer to a specific person or persons. Such delegation of authority
25 shall be established in writing and shall become effective upon delivery to
26 the Contractor.
27

28 **(b) Authority of the Inspectors.** Inspectors, as a representative of
29 the Engineer or other agencies, will inspect the work done and materials
30 furnished. Such inspection may extend to the preparation, fabrication, or
31 manufacture of the materials to be used. The Inspector does not have the
32 authority vested in the Engineer unless specifically delegated in writing.

33 The Inspector may not alter or waive the provisions of the contract, issue
34 instructions contrary to the contract, or act as agent or representative of
35 the Contractor.

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37 Failure of an Inspector, at any time, to reject non-conforming work
38 shall not be considered a waiver of the State's right to require work in strict
39 conformity with the contract documents as a condition of final acceptance.

40
41 **(c) Authority of the Consultant and Construction Manager.** The
42 State may engage Consultants and Construction Managers to perform
43 duties in connection with the work. Such retained consultants and
44 construction managers shall have no greater authority than an inspector
45 except to the extent delegated in writing by the Engineer.

46
47 **(d) Notices to the State.** Any written notice to be given to the State
48 or the Department shall be either:

49
50 **(1)** Delivered in person to the Engineer or his delegated rep,

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52 **(2)** Mailed to the Engineer or his delegated rep at the address or
53 addresses as directed in writing by the Engineer or, in the absence
54 of written direction, to the address of the State or Department
55 appearing on the contract, or

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57 **(3)** By electronic transmission such as email, to the email
58 address or addresses as directed in writing by the Engineer.

59
60 **5.2 Submittals.** The contract contains the description of various items that
61 the Contractor must submit to the Engineer for review and acceptance. The
62 Contractor shall review all submittals for correctness, conformance with the
63 requirements of the contract documents, and completeness before submitting
64 them to the Engineer. The submittal shall indicate the contract items and

65 specifications subsections for which the submittal is provided. The submittal
66 shall be legible and clearly indicate what portion of the submittal is being
67 submitted for review. The Contractor shall provide six copies of the required
68 submissions at the earliest possible date.

69

70 Failure to furnish acceptable submittal(s) may result in the suspension of
71 payments due the Contractor.

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73 The Contractor shall not add onto the submittal(s) any conditions or
74 disclaimers that conflict with the contract requirements.

75

76 **5.3 Shop Drawings.**

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78 **(a) Shop Drawing Requirements.** The Contractor shall prepare,
79 thoroughly check, approve, and submit all shop drawings to the Engineer
80 for review. Whenever possible, electronic files, in a format designated by
81 the Engineer, shall be submitted with the hard copies. The Contractor
82 shall indicate its approval by stamping and signing each submittal of shop
83 drawing. Any shop drawing submitted without being reviewed, stamped,
84 and signed will be returned as an incomplete submittal, and any delay
85 caused thereby shall be the Contractor's responsibility.

86

87 All drawings which require an engineering stamp shall be stamped
88 by professional engineers licensed in the State of Hawaii. Unless
89 otherwise noted in the contract documents, shop drawings shall indicate,
90 in detail, all parts of an item of work, including erection and setting
91 instructions and engagements with work of other trades or other separate
92 contractors. Shop drawings for structural steel, millwork, pre-cast
93 concrete and falsework, formwork or centering with heights of 40 feet or
94 more, or open spans of 20 feet or more shall consist of calculations,
95 fabrication details, erection drawings, and other shop drawings necessary
96 to show the details, dimensions, sizes of members, anchor bolt plans,

97 insert locations and other information necessary for the complete
98 fabrication and erection of the structure to be constructed. Shop drawings
99 shall also include stress sheets, drawings, bending diagrams for reinforcing
100 steel, and plans for erection, falsework, framework, cofferdam, and other
101 items or such other similar data required for the successful completion
102 of the work.

103
104 All shop drawings, as required by the contract or as determined by
105 the Engineer to be necessary to illustrate details of the work, shall be
106 submitted to the Engineer with such promptness as to cause no delay in
107 the work or the work of any other Contractor. Delay caused by the failure
108 of the Contractor to submit shop drawings on a timely basis to allow for
109 review, possible resubmittal, and acceptance will not be considered as a
110 justifiable reason for a contract time extension. Contractor, at its own risk,
111 may proceed with the work affected by the shop drawings after they are
112 submitted but before receiving acceptance. The State shall not be liable
113 for any increase in contract price or contract time required for the
114 correction of work done without the benefit of accepted shop drawings.

115
116 The Contractor shall not make changes to the accepted shop
117 drawings without submitting a written request to the Engineer and
118 receiving and reviewing a written acceptance of the change by the
119 Engineer.

120
121 By approving and submitting shop drawings, the Contractor thereby
122 represents that it has determined and verified all field measurements and
123 field construction criteria, or will do so, and that it has checked and
124 coordinated each shop drawing with the requirements of the work and the
125 contract documents. When shop drawings are prepared and processed
126 before field measurements and field construction criteria can be or have
127 been determined or verified, the Contractor shall make all necessary

128 adjustments in the work or resubmit further shop drawings, all at no
129 increase in contract price or contract time.

130

131 The shop drawing submitted must be accompanied by a transmittal
132 giving a list of the titles and numbers of the drawings. Each series shall
133 be numbered consecutively for ready reference, and the submittal shall be
134 marked with enough information to identify itself including date; project
135 name and number; name of the submitting Contractor or subcontractor;
136 revision number and revision box, which gives the date of the revision and
137 what the revisions changed.

138

139 The size of the sheets that shop drawings are prepared on shall be
140 appropriate to suit the drawing being presented so that the information is
141 clearly and legibly depicted. The Engineer will determine what size is
142 appropriate.

143

144 When required by the contract, the Contractor shall submit to the
145 Engineer descriptive sheets such as brochures, catalogs, and illustrations,
146 which will completely describe the material, product, equipment, furniture,
147 or appliances to be used in the project as shown in the drawings and
148 specifications and indicate such conformity by marking, or stamping, and
149 signing each sheet.

150

151 **(b) Submittal for Deviations and Variances.** The Contractor shall
152 include, with the submittal, written notification clearly identifying and
153 summarizing all deviations or variances from the contract drawings,
154 specifications, and other contract documents. The variances shall also be
155 clearly indicated and marked as "Variance" on the shop drawing,
156 descriptive sheet, and material sample or color sample. Failure to so
157 notify of and identify such variance shall be grounds for rejection of the
158 related work or materials, notwithstanding that the Engineer accepted the
159 submittal. If the variances are not acceptable to the Engineer, the

160 Contractor will be required to furnish the item as specified or indicated on
161 the contract documents at no increase in contract price or contract time.

162

163 **5.4 Review and Acceptance Process.** The Engineer will complete the
164 review of the submittal within 30 days from the date of receipt unless a different
165 review time is established by the contract documents. The Engineer will advise
166 the Contractor, in writing, as to the acceptability of the submittal. Should the
167 Engineer partially or totally reject the submittal, the Contractor shall modify the
168 submittal as required by the Engineer and resubmit the item within 15 days. At
169 this time, the review and acceptance cycle described above shall begin again.
170 The review and acceptance cycle shall begin again, as described above, each
171 time the submittal is returned to the Contractor for modification. If the volume of
172 the shop drawings submitted at any time for review is unusually large, the
173 Contractor shall inform the Engineer of its preferred order for reviews, and the
174 Engineer will use reasonable efforts to accommodate the Contractor's priority.

175

176 The acceptance by the Engineer of the Contractor's submittal relates only
177 to their sufficiency and compliance with the intention of the contract. Acceptance
178 by the Engineer of the Contractor's submittal does not relieve the Contractor of
179 any responsibility for accuracy of dimensions, details, quantities and proper fit,
180 and for agreement and conformity of submittal with the contract drawings and
181 specifications. Nor will the Engineer's acceptance relieve the Contractor of
182 responsibility for variance from the contract documents unless the Contractor, at
183 the time of submittal, has provided notice and identification of such variances
184 required by this section. Acceptance of a variance shall not justify a contract
185 price or time adjustment unless the contractor requests such adjustment at the
186 time of submittal, and the adjustment is explicitly agreed to in writing by the
187 Engineer. Any such request shall include price details and proposed scheduling
188 modifications. Acceptance of a variance is subject to all contract terms,
189 stipulations, and covenants and is without prejudice to any and all rights under
190 the surety bond.

191

192 If the Engineer returns a submittal to the Contractor that has been rejected,
193 the Contractor, so as not to delay the work, shall promptly make a resubmittal
194 conforming to the requirements of the contract documents and indicating in writing
195 on the transmittal and the subject submittal what portions of the resubmittal have
196 been altered in order to meet the acceptance of the Engineer. Any other
197 differences between the resubmittal and the prior submittal shall also be
198 specifically described in the transmittal.

199

200 No mark or notation made by the Engineer on or accompanying the return
201 of any submittal to the Contractor shall be considered a request or order for a
202 change in work. If the Contractor believes any such mark or notation constitutes
203 a request for a change in the work for which it is entitled to an adjustment in
204 contract price, contract time, or both, the Contractor must follow the procedures
205 established in Section 4.2 Changes or lose its right to claim for an adjustment.

206

207 **5.5 Interpretations of the Contract Documents; Conflicts and Ambiguity.**

208 The contract documents are complementary. Any requirement occurring in one
209 document is as binding as though occurring in all. A stricter requirement, as
210 determined by the Engineer, prevails over any less strict requirement. The
211 stricter requirement will be the requirement that provides the greater product life,
212 durability, strength, and function.

213

214 The Contractor shall not take advantage of any apparent error or omission
215 in the contract documents. The Contractor shall carefully study and compare the
216 contract documents with each other, with field conditions, and with the
217 information furnished by the State and shall immediately report to the Engineer
218 errors, conflicts, ambiguities, inconsistencies, or omissions discovered. Should
219 an item not be sufficiently detailed or explained in the contract documents, the
220 Contractor shall report to the Engineer immediately and request the Engineer's
221 clarification and interpretation. The Engineer will issue a clarification or
222 interpretation that is consistent with the intent of and reasonably inferred from the
223 contract documents.

224

225 The technical specifications and contract drawings within a trade heading,
226 title, or discipline do not necessarily describe or incorporate all work required for
227 the project involving a specific trade. It is the Contractor's responsibility to review
228 the entire project documents to identify the work for a specific trade.

229

230 The design and performance requirements specified in the plans and
231 specifications prevail over any listed approved manufacturer or supplier. The
232 listing of an approved manufacturer or supplier in the contract documents does
233 not constitute a representation by the State that such manufacturer or supplier
234 can provide the materials or equipment required for the job.

235

236 **5.6 (Reserved)**

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238 **5.7 Examination of Contract Documents and Project Site.** The
239 Contractor shall carefully examine the project site to become familiar with the
240 conditions to be encountered in performing the work and the requirements of the
241 contract documents. The Contractor shall be charged with knowledge of all
242 conditions at the site that may affect the work, including the storage of materials
243 and equipment and access thereto, that would normally be discovered by a
244 reasonable pre-bid site inspection.

245

246 When the contract drawings include a log of test borings showing a record
247 of the data obtained by the State's investigation of subsurface conditions, said
248 log represents only the finding of the State as to the character of material
249 encountered in its test borings and only at the location of each boring.
250 Underground site conditions in Hawaii vary widely. Accordingly, there is no
251 warranty, either expressed or implied, that the conditions indicated are
252 representative of those existing throughout the work or any part of it or that other
253 conditions may not occur.

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255 **5.8 Coordination Between the Contractor and the State.**

256

257 **(a) Drawings and Special Provisions.** If available, the State will
258 furnish the Contractor with extra bid sets of the project plans and special
259 provisions. The project plans furnished will be the same size as that
260 issued for bidding purposes. If none are available, the Contractor shall be
261 responsible for making his own copies of project plans and special
262 provisions. The Contractor shall have and maintain at least one set of
263 plans and specifications on the work site at all times.

264

265 Revisions to the drawings may be made and, when deemed
266 necessary by the Engineer during progress of the work, additional detailed
267 drawings will be furnished to the Contractor. These additional drawings
268 will be considered as forming part of the Contract.

269

270 The Contractor shall maintain on the job site a set of full-size
271 contract drawings, marking them in red to show all variations between the
272 construction actually provided and that indicated or specified in the
273 contract documents, including buried or concealed construction. Actual
274 location of work shall be clearly recorded as the work progresses,
275 including all changes to the contract and equipment size and type.
276 Drawings shall be available at the site at all times for inspection.

277

278 The Contractor, at his own expense, shall incorporate all field
279 changes, Post Construction Document (PCD) Changes, etc. in a clearly
280 legible manner utilizing the symbols of the Contract drawings onto the
281 contract drawings. All underground stubouts shall be dimensionally
282 located from the building structure. Monthly and final payments to the
283 Contractor shall be subject to prior approval of the drawings. On
284 completion of all work under the contract, two sets of marked-up record
285 drawings, signed and dated, shall be delivered to the Engineer and shall
286 be subject to approval before acceptance.

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(b) Contractor’s Authorized Representative. Before starting work, the Contractor shall designate an authorized representative to represent and act for the Contractor, shall inform the Engineer in writing of the name and address of such representative together with a clear definition of the scope of his authority to represent and act for the Contractor, and shall specify any and all limitations of such authority. Such representative shall be present or be duly represented at the site of work at all times when work is in progress. During periods when work is suspended, arrangements acceptable to the Engineer shall be made for any communications to the Contractor which may be required. The Contractor's authorized representative shall be supported by competent assistants, as necessary, and the authorized representative and his assistants shall be satisfactory to the Engineer. All directions, instructions, and other communications given to the authorized representative by the Engineer shall be construed as if given to the Contractor.

(c) Superintendent. The Contractor shall have a competent superintendent on the work site while work is being performed under the contract. The superintendent shall be able to read and understand the contract documents, shall be experienced in the type of project being undertaken and the work being performed, and shall be fluent in the English language. If a superintendent is not present at the work site, the Engineer shall have the right to suspend the work as described under Subsection 8.10 Suspension of Work.

The Contractor shall provide the Engineer a written statement giving the name of the superintendents assigned to the project. The Contractor shall be responsible for notifying the Engineer in writing of any change in the superintendents in a timely manner.

318 **5.9 Coordination Between Contractors; Impacts.**

319

320 **(a) General.** Other work by other Contractors may be in progress
321 within or near the project limits. Each Contractor shall conduct work so as
322 not to hinder the progress of the work by other Contractors within or near
323 the project limit. Each Contractor shall be responsible for any damage it
324 causes to work of another Contractor. Contractors shall cooperate with
325 each other, including, but not limited to:

326

327 **(1)** Coordinating their work schedules and traffic control plans.

328

329 **(2)** Placing and disposing of the materials used.

330

331 **(3)** Operating and storage of equipment.

332

333 The State is not obligated to modify contract time or price on
334 account of any inconvenience, delay, or loss experienced by the
335 Contractor because of the presence and operations of other contractors
336 working within or near the limits of the project.

337

338 In the event of a disputed coordination issue between Contractors,
339 they shall submit the dispute in writing to the Engineer who shall make the
340 final determination.

341

342 **(b) Responsibility for Impact on Another State Contractor;**

343 **Retention.** In the event the Contractor unreasonably delays or
344 otherwise interferes with the work of another State construction contractor
345 during the course of the work, resulting in a claim against the State by the
346 impacted contractor, the Contractor shall defend against any such claim,
347 and shall indemnify and hold the State harmless for all damages, costs
348 and legal fees resulting from the Contractor's unreasonable delays and
349 other interference. The Engineer, upon finding good cause in support of

350 the impacted contractor's claim, may deduct up to but not more than 10%
351 from the subsequent progress payments due the Contractor until the full
352 amount of the claim has been retained. This right of retention is separate
353 from and in addition to any other retainage rights created by contract or
354 law.

355
356 Upon final resolution of the impact claim, the Engineer may deduct
357 the amount of the claim from the retained funds described herein, and
358 from any other funds held by the State for the account of the Contractor.
359 If the retained funds are insufficient to pay the entire claim, the Engineer
360 may deduct up to 10% from future progress payments, or from the
361 final payment for the contracted work without limitation until the claim
362 amount is paid in full, or recover the deficit from the Contractor by any
363 other means authorized by law. If the retained funds exceed the amount
364 of the final resolution of the impact claim, the Engineer shall pay the
365 Contractor that portion of the retained funds that the Contractor would
366 otherwise be entitled to as of the time of payment.

367
368 The Contractor may contest the Engineer's finding, and should a
369 determination be made that the impacted contractor's claim was not
370 caused by the Contractor, any monies being withheld for the impacted
371 contractor's claim, will be released to the Contractor. Until such
372 determination is made, the Contractor will not be entitled to any monies
373 being withheld for the impacted contractor's claim.

374
375 **5.10 Construction Stakes, Lines, and Grades.**

376
377 **(a) General.** The Contractor shall survey and stake out the work
378 including verification and establishment of all lines, grades, dimensions, and
379 elevations. The Contractor shall prepare and maintain field notes and
380 supporting data in a manner acceptable to the Engineer. The field notes
381 and supporting data shall be made available to the Engineer immediately

382 upon request. The personnel doing the survey work and preparing the
383 calculations derived therefrom shall be made available by the Contractor to
384 the Engineer for explanation, clarification, or both, immediately upon
385 request.

386 The Contractor shall immediately correct or replace deficient or
387 inaccurate layout and construction work at no increase in contract price or
388 contract time.

389 **(b) Survey and Staking Requirements.** The Engineer will furnish
390 necessary control points for the project limits, points of intersection, and
391 benchmarks set by the Engineer or others. The Contractor shall be
392 responsible for the laying out of all other necessary work from the given
393 information. The Contractor shall reset the layout as many times as
394 necessary to perform the work.

395
396 The Contractor shall preserve all survey features, including, but not
397 limited to, control points, stakes, marks, or monuments that the Engineer
398 or others have furnished. If the Contractor destroys or disturbs any such
399 survey feature, the Contractor shall replace or restore these items at no
400 cost to the State.

401
402 **5.11 Inspection of the Work and Materials.** Materials and each part of the
403 details of the work shall be subject to inspection and testing for conformance by
404 the Engineer. Unless otherwise specified, all such testing shall be at the
405 Contractor's expense as part of the contract price. The Contractor shall furnish
406 the Engineer information, assistance, and provide appropriate safeguards and
407 equipment to allow a complete inspection to be made

408
409 The Engineer may inspect the production, fabrication, and manufacture of
410 materials and items that are to be incorporated into the work. The Contractor
411 shall ensure that the producer, fabricator, and manufacturer provide access to
412 the Engineer, without adjustment in contract price or contract time, at the source

413 of such materials and items or at any other place such materials or items may be
414 located before they are incorporated into the work. The Engineer will comply
415 with safety procedures established by the facility. When any government agency
416 or any utility company is to pay a portion of the cost of the work covered by this
417 contract, they shall have the right to inspect the work. Such inspection shall not
418 make that government agency or utility company a party to this contract.

419

420 For any inspection, the Contractor shall expose or uncover such portions
421 of the work as requested by the Engineer. After inspection, the Contractor shall
422 restore that portion of the work to the standard required by the contract. When
423 the Engineer orders an inspection that is not considered a normal daily, pre-final,
424 or final inspection that requires uncovering or results in damage to or destruction
425 of work in place:

426

427 **(1)** If the exposed and inspected work conforms to the contract
428 requirements, the State will reimburse the reasonable costs of exposing,
429 inspecting, and restoring the work as extra work and extend contract time
430 as appropriate.

431

432 **(2)** If the exposed and inspected work is non-conforming or
433 otherwise non-acceptable, the costs and time relating to exposing,
434 inspecting, and restoring the work is not reimbursable.

435

436 **(3)** No reimbursement will be allowed for the costs and time of
437 exposing, inspecting, and restoring work that the Engineer had not been
438 given reasonable opportunity to inspect before it was covered.

439

440 When the contract documents or a written directive from the Engineer
441 require that certain work not proceed until the Engineer is given notice and the
442 opportunity to inspect, the Engineer may order the work done or materials used
443 without the Engineer having been given notice and opportunity to inspect to be
444 removed and replaced at no increase in contract price or contract time.

445

446 Inspections are performed for the exclusive benefit of the State. The
447 inspection of or the failure to inspect the work shall not relieve the Contractor of
448 obligations to fulfill the contract as prescribed, to correct defective work, and to
449 replace unsuitable or rejected materials regardless of whether payment for such
450 work has been made.

451

452 **5.12 Removal of Non-Conforming and Unauthorized Work: Performance**
453 **of Corrective or Remedial Work.** All work that does not conform to the
454 requirements of the contract shall be remedied or removed and replaced by the
455 Contractor at no increase in contract price, contract time, or both. No payment
456 will be made for non-conforming work.

457

458 Any work done beyond the work limits shown on the drawings and
459 specifications or established by the Engineer or any additional work done without
460 written authority will be considered unauthorized work. No payment will be made
461 for unauthorized work. Unauthorized work may be ordered removed at no
462 increase in contract price, contract time, or both.

463

464 The Engineer may require that the Contractor submit a schedule
465 acceptable to the Engineer for the performance of corrective or remedial work.
466 Should the Contractor fail to submit an acceptable schedule or fail to comply with
467 the accepted schedule for performance of corrective or remedial work, or
468 otherwise fail to comply with any order of the Engineer regarding remedial,
469 corrective, removal, and replacement work, the Engineer shall have the authority,
470 in addition to all other remedies provided by contract or law, to cause non-
471 conforming work to be remedied or removed and replaced and unauthorized
472 work removed by someone other than the Contractor. The Engineer may charge
473 the Contractor the cost of such work, deduct the costs from any monies due or to
474 become due the Contractor, or a combination thereof.

475

476 **5.13 Maintenance.** The Contractor shall assume all risk of loss or damage to

477 the work and shall maintain the work, including the removal of all graffiti and
478 defacement, until final acceptance of the project or incremental acceptance of
479 that portion of the work. If the Contractor fails to remedy unsatisfactory
480 maintenance after receipt of a written directive from the Engineer, the Engineer
481 shall have the authority, in addition to other remedies by law, to have such
482 maintenance performed by someone other than the Contractor, to charge the
483 Contractor for such maintenance, or deduct the cost of such maintenance from
484 monies due or become due to the Contractor.

485

486 During the performance of the work and upon termination or completion
487 thereof and at the end of each working day, the Contractor shall remove or
488 control all debris and waste resulting from his operations and keep and leave the
489 site of work in satisfactory condition.

490

491 **5.14 Storage and Handling of Materials and Equipment.**

492

493 **(a) State's Responsibility.** The Engineer will supply a reasonable
494 area for the storage of materials and equipment in or near the project site.

495

496 **(b) Contractor's Responsibility.** Materials shall be stored and
497 handled to preserve their quality and fitness for the work. The Contractor
498 shall locate stored materials so as to facilitate their prompt inspection by
499 the Engineer. No State land outside the project limits may be used
500 without authority granted by the State agency having jurisdiction over the
501 site. Prior to final inspection, the Contractor, at no increase in contract
502 price or contract time, shall restore all storage sites provided by the State
503 to their pre-existing or to a different condition as required by the contract
504 documents or pursuant to an agreement between the Contractor and
505 Engineer.

506

507 **(c) Contractor's Risk.** The Contractor assumes all risk of loss or
508 damage to the materials and equipment stored within the State project site

509 or any other storage site provided by the Engineer pursuant to Subsection
510 5.14(a). Storage of materials and equipment in connection with the
511 project is an element of the Contractor's "performance" as referred to in
512 Section 7.15 Responsibility For Damage Claims; Indemnity.

513

514 **(d) Excavated or Removed Material.** All materials excavated or
515 removed as part of the work shall be properly disposed of by the
516 Contractor as part of the contract price, unless otherwise directed by the
517 Engineer or the contract documents. Unsuitable excavated or
518 removed material shall not be maintained in or around the work site for
519 an unreasonable length of time as determined by the Engineer.

520

521 When stockpiling of suitable excavated or removed materials is
522 necessary, the material shall be hauled and stored in an area designated
523 by the Engineer. No excavated material shall be stockpiled at any time in
524 a manner that may endanger traffic or that may in any other way be
525 detrimental to the completed work, health, or the operation of the airport.

526

527 **5.15 Value Engineering Incentive Proposal.** On any contract in an amount
528 greater than \$100,000, the Contractor shall be entitled to an equitable adjustment
529 to share in cost savings resulting from the value engineering proposal, subject to
530 the following conditions:

531

532 **(1)** A value engineering proposal must result in a minimum
533 savings of \$4,000 to the State by providing less costly items than
534 those specified in the contract without impairing any of their
535 essential functions and characteristics such as service life,
536 durability, reliability, substitutability, economy of operations and
537 maintenance, ease of maintenance, and necessary standardized
538 features.

539

540 **(2)** A value engineering proposal shall not be deemed accepted
until a change order has been issued establishing the proposal as

541 part of the work.

542

543 (3) A value engineering proposal must be submitted in
544 conformity with, and is subject to, the terms and conditions of
545 Section 3-132, H.A.R., and the procedures established by the
546 Department.

547

548 (4) The Contractor shall bear the cost of the VECP submittal
549 process.

550

551 **5.16 Subcontracts.**

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553 (a) **Subcontract Requirements.** Nothing contained in the contract
554 documents shall create a contractual relationship between the State and
555 any subcontractor.

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557 Subject to the provisions of Chapter 103D-302, H.R.S., the
558 Contractor may subcontract a portion of the work, but the Contractor shall
559 remain responsible for the work so subcontracted. When requested by
560 the Engineer, the Contractor shall provide a copy of any subcontract to the
561 Engineer within 7 calendar days.

562

563 The Contractor shall not sublet, sell, transfer, assign, or otherwise
564 dispose of any duty the Contractor may have pursuant to the contract
565 without the written consent of the State.

566

567 The Contractor shall perform with his/her own organization work
568 amounting to not less than 30 percent of the total contract cost, except for
569 any items designated by the State in the contract as "specialty items".
570 Where an entire item is subcontracted, the value of work subcontracted
571 will be based on the contract item bid price. When a portion of an item is
572 subcontracted, the value of work subcontracted will be estimated by the

573 Engineer and be based on the cost of such portion of the contract items.

574

575 No subcontract shall release the Contractor of any liability under
576 the contract and bonds.

577

578 **(b) Obligations of Subcontract of \$50,000 or more as to the**
579 **Employment of State of Hawaii Residents.** The requirements of
580 Section 7.2 Employment of State of Hawaii Residents, shall apply to any
581 subcontract valued at \$50,000 or more and such subcontractors awarded
582 such subcontracts must ensure that State of Hawaii residents comprise
583 not less than 80% of the subcontractor's workforce used to perform the
584 subcontract as calculated by Subsection 7.2(a).

585

586 **(c) Substituting Subcontractors.** Under Chapter 103D-302,
587 H.R.S., the Contractor is required to list the names of persons or firms to
588 be engaged by the Contractor as a subcontractor or joint contractor in the
589 performance of the contract. Contractors may enter into subcontracts only
590 with subcontractors listed in the proposal. However, for work not covered
591 by a listed subcontractor, after the Notice to Proceed, the Contractor may
592 enter into subcontracts with a nonlisted subcontractor but only for such
593 work. Substitutions will be allowed only if the subcontractor:

594

595 **(1)** Fails, refuses or is unable to enter into a subcontract;

596

597 **(2)** Agrees in writing, together with the Contractor, to be
598 released from the subcontract;

599

600 **(3)** Becomes insolvent;

601

602 **(4)** Has its Contractor's license suspended or revoked;

603

604 **(5)** Has allegedly defaulted or has otherwise breached the

605 subcontract in connection with the subcontracted work; or

606

607 **(6)** Is unable or refuses to comply with other requirements of law
608 applicable to Contractors, subcontractors, and public works
609 projects.

610

611 Requests to substitute a subcontractor shall be allowed only upon
612 the written approval of the Engineer. The Contractor agrees to hold the
613 State harmless, defend, and indemnify the State for all claims, liabilities, or
614 damages whatsoever, including attorney's fees, arising out of or related to
615 the approval or disapproval of the substitution.

616

617 **(d) Contractor's Responsibility for Subcontractors.** The
618 Contractor is responsible for the operations and the work of its
619 subcontractors as well as the conduct of the subcontractors' employees.

620

621 **5.17 Dimensions, Performance Standards, and Other Values Required by**
622 **the Contract.** When work required by the contract is subject to contractually
623 established tolerances, the Contractor's means and methods shall nevertheless
624 be designed to meet the precise dimensions, performance standards, and other
625 values required by the contract. Contractor shall not intentionally attempt to
626 provide work that does not strictly meet the precise dimensions, performance
627 standards, and other values required by the contract.

628

629 **END OF ARTICLE V**

630

631

632

633

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