

1           **ARTICLE VII – LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

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3       **7.1 Insurance Requirements.**

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5           **(a) Obligation of Contractor.** Contractor shall not commence any  
6 work until it obtains, at its own expense, all required insurance described  
7 herein. Such insurance shall be provided by an insurance company  
8 authorized by the laws of the State to issue such insurance in the State of  
9 Hawaii. Coverage by a “Non-Admitted” carrier is permissible provided the  
10 carrier has a Best’s Rating of “A-VII” or better. The Contractor shall  
11 maintain and ensure all insurance policies are current for the full period of  
12 the contract until final acceptance of the work by the State.

13  
14           The Certificate of Insurance shall contain: a clause that it is agreed  
15 that any insurance maintained by the State of Hawaii will apply in excess  
16 of, and not contribute with, insurance provided by this policy; and shall be  
17 accompanied by endorsement form CG2010 or equivalent naming the  
18 State as an additional insured to the policy which status shall be  
19 maintained for the full period of the contract until final acceptance of the  
20 work by State.

21  
22           The Contractor shall obtain all required insurance as part of the  
23 contract price. Where there is a requirement for the State of Hawaii and  
24 its officers and employees to be named as additional insureds under any  
25 Contractor’s insurance policy, before the State of Hawaii issues the Notice  
26 to Proceed, the Contractor shall obtain and submit to the Engineer a  
27 Certificate of Insurance and a written policy endorsement that confirms the  
28 State of Hawaii and its officers and employees are additional insureds for  
29 the specific State project number and project title under such insurance  
30 policies. The written policy endorsement must be issued by the insurance  
31 company insuring the Contractor for the specified policy type or by an  
32 agent of such insurance company who is vested with the authority to issue  
33 a written policy endorsement. The insurer’s agent shall also submit

34 written confirmation of such authority to bind the insurer. Any delays in  
35 the issuance of the Notice to Proceed attributed to the failure to obtain the  
36 proof of the State of Hawaii and its officers and employees' additional  
37 insured status shall be charged to the Contractor.

38

39 A mere Certificate of Insurance issued by a broker who represents  
40 the Contractor (but not the Contractor's insurer), or by any other party who  
41 is not authorized to contractually name the State as an additional insured  
42 under the Contractor's insurance policy, is not sufficient to meet the  
43 Contractor's insurance obligations.

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45 Certificates shall contain a provision that coverages being certified  
46 will not be cancelled or materially changed without giving the Engineer at  
47 least thirty (30) days prior written notice. Contractor will immediately  
48 provide written notice to the Director should any of the insurance policies  
49 evidenced on its Certificate of Insurance form be cancelled, reduced in  
50 scope or coverage, or not renewed upon expiration. Should any policy be  
51 canceled before final acceptance of the work by the State, and the  
52 Contractor fails to immediately procure replacement insurance as  
53 specified, the State, in addition to all other remedies it may have for such  
54 breach, reserves the right to procure such insurance and deduct the cost  
55 thereof from any money due or to become due to the contractor.

56

57 Nothing contained in these insurance requirements is to be  
58 construed as limiting the extent of Contractor's responsibility for payment  
59 of damages resulting from its operations under this contract, including the  
60 Contractor's obligation to pay liquidated damages, nor shall it affect the  
61 Contractor's separate and independent duty to defend, indemnify, and  
62 hold the State harmless pursuant to other provisions of this contract. In no  
63 instance will the State's exercise of an option to occupy and use  
64 completed portions of the work relieve the Contractor of its obligation to

65 maintain the required insurance until the date of final acceptance of the  
66 work.

67  
68 All insurance described herein shall be primary and cover the  
69 insured for all work to be performed under the contract, all work performed  
70 incidental thereto or directly or indirectly connected therewith, including,  
71 but not limited to traffic detour work, barricades, warnings, diversions, lane  
72 closures, and other work performed outside the work area and all change  
73 order work.

74  
75 The Contractor shall, from time to time, furnish the Engineer, when  
76 requested, satisfactory proof of coverage of each type of insurance  
77 required covering the work. Failure to comply with the Engineer's request  
78 may result in suspension of the work and shall be sufficient grounds to  
79 withhold future payments due the Contractor and to terminate the contract  
80 for Contractor's default.

81  
82 **(b) Types of Insurance.** Contractor shall purchase and maintain  
83 insurance described below which shall provide coverage against claims  
84 arising out of the Contractor's operations under the contract, whether such  
85 operations be by the Contractor itself or by a subcontractor or by anyone  
86 directly or indirectly employed by any of them or by anyone for whose acts  
87 any of them may be liable.

88  
89 **(1) Worker's Compensation.** The Contractor shall obtain  
90 worker's compensation insurance for all persons whom they  
91 employ in carrying out the work under this contract. This insurance  
92 shall be in strict conformity with the requirements of the most  
93 current and applicable State of Hawaii Worker's Compensation  
94 Insurance laws in effect on the date of the execution of this contract  
95 and as modified during the duration of the contract.

96

97                   **(2) Auto Liability.**     The Contractor shall obtain Auto Liability  
98                   Insurance covering all owned, non-owned, and hired autos with a  
99                   combined single limit of not less than \$1,000,000 per occurrence  
100                   for bodily injury and property damage with the State of Hawaii  
101                   named as additional insured. Refer to SPECIAL CONDITIONS for  
102                   any additional requirements.

103  
104                   **(3) General Liability.**     The Contractor shall obtain General  
105                   Liability insurance with a limit of not less than \$2,000,000 per  
106                   occurrence and in the Aggregates for each of the following:

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108                               **(A)**     Products – Completed/Operations Aggregate,

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110                               **(B)**     Personal & Advertising Injury, and

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112                               **(C)**     Bodily Injury & Property Damage.

113  
114                   The General Liability insurance shall include the State as an  
115                   additional insured. The required limit of insurance may be provided  
116                   by a single policy or with a combination of primary and excess  
117                   policies. Refer to SPECIAL CONDITIONS for any additional  
118                   requirements.

119  
120                   **(4) Builder's Risk For All Work.**     The Contractor shall take  
121                   out a policy of builder's risk insurance for the full replacement value  
122                   of the project work, from a company licensed or otherwise  
123                   authorized to do business in the State of Hawaii; naming the State  
124                   as an additional insured under each policy; and covering all work,  
125                   labor, and materials furnished by such Contractor and all its  
126                   subcontractors against loss by fire, windstorm, tsunamis,  
127                   earthquakes, lightning, explosion, other perils covered by the  
128                   standard Extended Coverage Endorsement, vandalism, and

129 malicious mischief. Refer to SPECIAL CONDITIONS for any  
130 additional requirements.

131

132 **(c) Breach of Duty by Contractor or Insurer.** If either the  
133 Contractor or its insurer wrongfully fails to defend or indemnify the State of  
134 Hawaii, its officers, and employees against any claims, the State may  
135 debar or suspend the Contractor from bidding or working on construction  
136 projects and may refuse to permit the insurer to provide insurance on  
137 construction projects.

138

139 The State may exercise these remedies in addition to other legal or  
140 equitable remedies it may have against the Contractor, insurer, or both.

141

142 **(d) Subcontractor Insurance.** The Contractor shall either:

143

144 **(1)** Require its subcontractors to procure and to maintain, during  
145 the life of its subcontract, subcontractor's comprehensive general  
146 liability, automobile liability, and property damage liability insurance  
147 of the type and in the same amounts specified herein and further  
148 require that such coverage be required by its subcontractors from  
149 all lower tier subcontractors. On all such insurance coverages, the  
150 State of Hawaii, its officers, and employees, shall be named as  
151 additional insureds; or

152

153 **(2)** Insure the activities of its subcontractors and their lower tier  
154 subcontractors in its own policy.

155

156 In the absence of language in the certificate excluding coverage for  
157 subcontractors, it will be understood that the Contractor's insurance  
158 covers all aspects of the work whether performed by the Contractor or any  
159 of its subcontractors.

160

161 **(e) Self-Insured Retention.** The Contractor shall be permitted, in  
162 cooperation with its insurers, to maintain a self-insured retention for up to  
163 25 percent of the per occurrence combined single limits of the commercial  
164 general liability and the automobile liability policies required by the  
165 contract documents.

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167 **7.2 Employment of State of Hawaii Residents.**

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169 **(a) Obligations of Contractor.** Pursuant to 103B-3(a), H.R.S., a  
170 Contractor awarded a contract shall ensure that State of Hawaii residents  
171 comprise not less than 80% of the workforce employed to perform the  
172 contract. The 80% requirement shall be determined by dividing the total  
173 number of hours worked on the contract and all subcontracts by State of  
174 Hawaii residents, by the total number of hours worked on the contract by  
175 all employees of the Contractor and all subcontractors in the performance  
176 of the contract. The hours worked by employees within shortage trades,  
177 as determined by the Department of Labor and Industrial Relations  
178 (DLIR), shall not be included in the calculation for this section.

179

180 **(1)** Notarized certificates of compliance with Section 103B-3(a),  
181 H.R.S. shall be made by an officer of the Contractor and applicable  
182 subcontractors and submitted as part of Subsection 8.19(a) Final  
183 Settlement of Contract Closing Requirements.

184

185 **(2)** The Contractor and any applicable subcontractors shall  
186 maintain records such as certified payrolls for laborers and  
187 mechanics who perform work at the site and timesheets for all other  
188 employees who performed work on the project. These records  
189 shall include the names, addresses and number of hours worked  
190 on the project by all employees of the Contractor and applicable  
191 subcontractors who performed work on the project to validate  
192 compliance with this section. The Contractor and applicable

193 subcontractors shall maintain, retain, and provide the Engineer  
194 access to these records at all times during the work as well as in  
195 accordance with Section 9.12 Records, Accounts, and Documents.  
196

197 **(3)** The Contractor has an affirmative duty, throughout the  
198 course of the project, to ensure that all subcontractors remain in  
199 compliance with this Section.  
200

201 **(b) Failure to Comply.** Failure to comply with Subsection 7.2(a) shall  
202 be deemed a breach of contract by the Contractor and the State may  
203 exercise all applicable remedies available including, but not limited to:  
204

205 **(1)** With respect to the Contractor, withholding of final payment  
206 on the contract until the Contractor complies with Subsection  
207 7.2(a); or  
208

209 **(2)** Proceedings for debarment or suspension of the contractor  
210 or subcontractor under Section 103D-702, H.R.S.  
211

212 **7.3 Permits and Licenses.** As part of the contract price, the Contractor  
213 shall obtain all permits and licenses required by law to perform the work and pay  
214 charges, fees, and taxes incidental to obtaining such permits and licenses. The  
215 Contractor assumes exclusive responsibility for identifying and acquiring all  
216 permits and licenses necessary to perform the work, except for those permits  
217 and licenses identified in the contract documents as being the responsibility of  
218 the State.  
219

220 The terms and conditions of any permit or license required for  
221 performance of the work, whether or not issued in the name of the Contractor,  
222 are incorporated into the contract. Compliance with such terms and conditions  
223 are duties owed by the Contractor to the State under the contract.  
224 Notwithstanding the enforcement authority of the permitting or licensing agency,

225 whether or not a State agency, non-compliance by the Contractor with any term  
226 or condition of such license or permit shall be deemed non-compliance with the  
227 contract and may constitute grounds for default.

228

229 The Engineer may grant a time adjustment, cost adjustment, or both, to  
230 the extent the Engineer determines that the Contractor was not a contributing  
231 factor for any delay in obtaining necessary permits or licenses.

232

233 **7.4 Working Hours; Night Work.** Normal working hours shall be from 7:00  
234 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Work performed  
235 between 3:30 p.m. and 7:00 a.m. of the following day is “night work”.

236

237 **7.5 Overtime and Night Work.** Overtime work shall be considered as work  
238 performed in excess of eight hours in any one day or work performed on  
239 Saturday, Sunday, or legal holidays of the State. Overtime and night work are  
240 permissible when approved by the Engineer in writing or as called for elsewhere  
241 within the contract documents. The Contractor shall inform the Engineer in  
242 writing at least three working days in advance of its intent to work overtime and  
243 10 working days in advance of any night work. In addition, the Contractor shall  
244 inform the Engineer of what specific work is to be done during any overtime and  
245 night work period.

246

247 The Engineer may, at any time, direct overtime and/or night work be  
248 performed in addition to or in lieu of work during normal working hours at such  
249 additional costs to the State as the Engineer determines to be reasonable.

250

251 The Engineer may cancel any overtime or night work previously approved  
252 or directed when the Engineer finds that work during these periods is detrimental  
253 to public welfare, safety, or the interest of the State.

254

255 **7.6 Overtime and Night Payment for State Inspection Service.**

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257 **(a) State's Responsibility for State's Cost.** The State shall be  
258 responsible for overtime or night work payment for State's staff and  
259 inspection personnel, including consultants, when the contract requires  
260 overtime or night work to be performed or directs the Contractor to work  
261 additional shifts or overtime for the State's convenience.

262

263 **(b) Contractor's Responsibility for State's Cost.** The Contractor  
264 shall be responsible for overtime or night work payment for the State's  
265 staff and inspection personnel, including consultants, when the Contractor  
266 does any other overtime or night work.

267

268 The Contractor shall pay the following costs incurred by the State:

269

270 **(1)** The payroll costs for the State's staff and inspection  
271 personnel assigned in connection with such work, including, but not  
272 limited to, salaries, the State's share of contributions to the  
273 employee's retirement, medical plan, social security, vacation, sick  
274 leave, worker's compensation funds, per diem, and other applicable  
275 fringe benefits and overhead expenses incurred on account of such  
276 work.

277

278 **(2)** The transportation costs incurred by the State's staff and  
279 inspection personnel, which are based on established rental rates  
280 or mileage allowance in use by the State for the particular  
281 equipment or vehicle.

282

283 **(3)** Fees and other costs billed the State by consultants  
284 engaged on the project for overtime and night work.

285

286 **(c) Payment for Inspection Service.** The monies due the State for  
287 costs described herein shall be deducted from the monies due or to

288           become due the Contractor. The Contractor shall not pay the State's  
289           employees and consultants directly.

290

291 **7.7 Contractor Duty Regarding Public Convenience.**       The Contractor  
292 shall, at all times, conduct the work in such manner and in such sequence as will  
293 insure the least practicable interference with pedestrian, bicycle, and motor  
294 passageways.

295

296 **7.8 Assignment or Change of Name.**

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298           **(a) General.**       The Contractor shall not sell, transfer, assign, or  
299           otherwise dispose of this contract or any part hereof or any right, title, or  
300           interest herein without the written consent of the Engineer.

301

302                       The Contractor may assign money due or to become due under the  
303           contract and such assignment will be recognized by the State, if given  
304           written notice thereof, to the extent permitted by law. Any assignment of  
305           monies shall be subject to all set-offs in favor of the State and to all  
306           deductions provided for in the contract, including, but not limited to,  
307           liquidated or actual damages for delay and money retained by the State  
308           for the completion of the work in the event that the Contractor should be in  
309           default.

310

311           **(b) Recognition of a Successor in Interest; Assignment.**   When in  
312           the best interest of the State, a successor in interest may be recognized in  
313           an assignment agreement in which the Contractor and the transferee and  
314           the State shall agree that:

315

316                       **(1)**    The transferee assumes all of the Contractor's obligation.

317

318                       **(2)**    The Contractor remains liable for all obligations under the  
319           contract but waives all rights under the contract against the State.

320

321           **(3)**    The Contractor shall continue to furnish, and the transferee  
322           shall also furnish, all required bonds.

323

324           **(c)    Change of Name.**    When a Contractor requests to change the  
325           name in which it holds a contract with the State, the Engineer shall, upon  
326           receipt of a document indicating such change of name (for example: an  
327           amendment to the articles of incorporation of the corporation), enter into  
328           an agreement with the requesting Contractor to effect such a change of  
329           name. The agreement changing the name shall specifically indicate that  
330           no other terms and conditions of the contract are thereby changed.

331

332           **7.9    Laws to be Observed; Indemnity.**    At all times, the Contractor shall  
333           observe and comply with all Federal, State, and local laws, ordinances, rules,  
334           regulations, and permit and license requirements, which in any manner affect  
335           those engaged or employed in the work, the materials used in the work, and the  
336           conduct of the work. The Contractor shall comply with all orders and decrees of  
337           government bodies or officials having any jurisdiction or authority over the work  
338           whether such orders or decrees are directed to the Contractor, its  
339           subcontractors, vendors and suppliers, or to the State.

340

341           No instruction in the contract documents or contained within any directive  
342           from the Engineer to the Contractor to observe and comply with any specific law,  
343           ordinance, rule, regulation, or permit or license requirement shall limit the duty of  
344           the Contractor to observe and comply with all other laws, ordinances, rules,  
345           regulations, or permit or license requirements that relate to the work.

346

347           The Contractor shall immediately notify the Engineer in writing of any  
348           orders, directives, notices, decrees, or warnings issued by any governmental  
349           agency to the Contractor, its subcontractors, vendors, and suppliers that a  
350           violation of law, rule, regulation, or permit or license requirement is alleged to  
351           have occurred or is occurring in connection with the work.

352

353           The Contractor shall defend, protect, hold harmless, compensate, and  
354 indemnify the State, its officers, and employees against any claim or liability  
355 arising from or based on the violation of any laws, ordinances, rules and  
356 regulations, orders or decrees, or the terms and conditions of any permits and  
357 licenses, whether such orders or decrees are directed to the Contractor, its  
358 subcontractors, vendors and suppliers, or to the State.

359

360 **7.10 Patented Devices, Materials, And Processes.**       If the Contractor  
361 desires or is required to use any designs, devices, materials, or processes  
362 covered by letters of patent or copyright, the right for such use shall be procured  
363 by the Contractor from the patentee or owner. The Contractor shall defend,  
364 protect, indemnify and hold harmless, compensate, and where appropriate,  
365 insure, the State from any and all claims, demands, liabilities, actions, and  
366 judgments for infringement by reason of the use of any such patented designs,  
367 devices, materials, or processes or any trademark or copyright in connection with  
368 the work to be performed under the contract.

369

370 **7.11 Furnishing Right-Of-Way.**    Except as noted in the contract documents,  
371 the State will be responsible for securing necessary rights-of-way.

372

373 **7.12 Safety: Accident Prevention.**

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375       **(a)**    The Contractor shall provide all safeguards, safety devices, and  
376 protective equipment and take any other needed actions as it determines,  
377 or as the Engineer may determine, to be reasonably necessary to protect  
378 the life and health of employees and other persons on and around the  
379 worksite and the safety of the public and to protect property in connection  
380 with the performance of the work covered by the contract.

381

382       **(b)**    The Contractor and any subcontractor shall not permit any  
383 employee, in performance of the contract, to work in surroundings or

384 under conditions which are unsanitary or hazardous or dangerous to  
385 his/her health or safety, as determined under construction safety and  
386 health standards promulgated by the Federal, State, and local authorities.

387

388 **(c)** The Contractor shall designate a safety officer whose responsibility  
389 will be to monitor the Contractor's safety practices and procedures and to  
390 ensure a safe working environment.

391

392 The Engineer as well as authorized Federal, State, and local  
393 officials shall have right of entry to any site of contract performance to  
394 inspect, investigate, and enforce the matter of compliance with the  
395 construction safety and health standards referred to herein; however, it is  
396 not the responsibility of the State to review the adequacy of the  
397 Contractor's onsite safety measures or to check on the performance of the  
398 Contractor's safety officer.

399

400 **(d)** The Contractor shall immediately comply with all safety and  
401 security directives issued by authorized Federal, State, and local officials.  
402 If the Contractor anticipates that any such directive may result in a claim  
403 for an increase in contract price or time, it shall notify the Engineer in  
404 writing not later than 24 hours after receiving such directive.

405

### 406 **7.13 Protection of Persons and Property.**

407

408 **(a) Contractor's Responsibility for Damage to Property.** All  
409 damage, injury, or loss to any property caused during the course of or  
410 arising out of the work, whether or not caused by negligent acts or  
411 omissions, shall be the responsibility of the Contractor and shall be  
412 remedied promptly by the Contractor. This provision shall not affect the  
413 Contractor's legal rights of subrogation, contribution, and indemnity to  
414 recover the costs of remedial measures and other damages to which it  
415 may be entitled.

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**(b) Safety Precautions and Programs.** The Contractor shall notify owners of adjacent properties and of underground (or overhead) utilities when performing work which may affect the owners and shall cooperate with the owners in the protection, removal, and replacement of their property.

The Contractor shall not permit any load to be placed on the work, any structure, roadway, or any other location that may endanger the safety of any persons or cause damage to any property. The Contractor shall not injure or destroy trees or shrubs that are identified in the contract documents for preservation nor remove or cut them without permission of the Engineer. The Contractor shall protect all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

In the event the Contractor encounters, on the site, material reasonably believed to be asbestos or other hazardous material that has not been rendered harmless, the Contractor shall stop work in the area and notify the Engineer promptly. The work in the affected area shall be resumed in the absence of hazardous materials or when the hazard has been rendered harmless.

**(c) Notification to the Engineer.** The Contractor shall notify the Engineer verbally as soon as conditions permit and in writing not later than noon of the following working day whenever:

- (1)** Police, fire, or other public safety officers are called to the work site for any reason or are present at the work site for any public safety related reason.

447 (2) Any person is treated or evacuated from the work site for  
448 medical reasons.

449

450 (3) Any member of the public claims to have been injured at the  
451 work site.

452

453 (4) The Contractor witnesses a member of the public being  
454 involved in an accident at the worksite or on account of conditions  
455 related to the work, whether or not visible injuries occur.

456

457 (5) Any representative of a Federal, State, or County regulatory  
458 or enforcement agency is present at the work site including but not  
459 limited to any representative of Department of Health, EPA, OSHA,  
460 and public works.

461

462 **7.14 Pollution Control and Protection Of Archeological, Historical, and**  
463 **Burial Sites.**

464

465 (a) **Erosion, Siltation, and Pollution Control.** The Contractor shall  
466 exercise precaution to prevent silting and pollution of oceans, rivers,  
467 streams, lakes, reservoirs, and other bodies and conveyances of water,  
468 including sewer systems and storm drains.

469

470 The Contractor shall provide for pollution, dust, and erosion control  
471 during the work, including periods of suspension of contract performance.  
472 If material begins to erode, the Contractor shall act immediately to bring  
473 the siltation, erosion, and pollution under control.

474

475 The Contractor shall follow:

476

477 (1) Guidelines in the City and County of Honolulu's "Best  
478 Management Practices Manual for Construction Sites in Honolulu",

479 in developing, installing, and maintaining BMPs for all projects;

480

481 **(2)** City and County of Honolulu’s “Rules for Soil Erosion  
482 Standards and Guidelines” for all projects on Oahu;

483

484 **(3)** Appropriate Soil Erosion Guidelines for Maui, Kauai,  
485 Molokai, Lanai, and Hawaii projects; and

486

487 **(4)** HNL SWMPP (Storm Water Management Program Plan)  
488 [http://hawaii.gov/dot/airports/doing-](http://hawaii.gov/dot/airports/doing-business/environmental/construction-site-runoff-control-program)  
489 [business/environmental/construction-site-runoff-control-program.](http://hawaii.gov/dot/airports/doing-business/environmental/construction-site-runoff-control-program)

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491 **(b) Archaeological, Historical, and Burial Sites.** Whenever the  
492 Contractor encounters sites of potentially historic or archaeological  
493 significance such as walls, platforms, pavements, and mounds or remains  
494 such as artifacts, burials, concentration of charcoal, or shells, work shall  
495 cease in the immediate vicinity of the site, and the site shall be protected  
496 from damage. The Contractor shall suspend any work that may affect the  
497 site and inform the Engineer immediately. Upon direction by the Engineer,  
498 the Contractor shall provide and install temporary fencing to protect such  
499 sites. The Contractor shall not resume the work suspended without the  
500 prior written direction of and subject to the conditions set by the Engineer.

501

502 **7.15 Responsibility For Damage Claims; Indemnity.** The Contractor shall  
503 compensate and make whole the State for all loss or damage to the State’s  
504 property and facilities arising out of any act or omission in the performance of the  
505 work by the Contractor, any subcontractor, or their employees and agents.

506

507 The Contractor shall defend, hold harmless, compensate, and indemnify  
508 the State, its employees, and officers against any loss, demand, claim, liability,  
509 suit, action, cause of action, judgment, cost, and expenses, including attorney’s  
510 fees, based upon personal injury, death, or property damage which arise out of



511 the Contractor's performance under the contract, including the operations and  
512 performance of one or more subcontractors, whether or not a lawsuit is filed  
513 against the State and whether or not the Contractor is named as a party to any  
514 such lawsuit, unless and until a court of competent jurisdiction makes a final non-  
515 reviewable determination that the personal injury, death, or property damage was  
516 caused solely by the negligence of the State.

517

518 The State may participate in the defense of any claim or suit brought  
519 against its officers or employees, without relieving the Contractor of any  
520 obligation hereunder. The purchase of liability insurance shall not relieve the  
521 Contractor of the obligations described herein. If the Contractor and its insurer  
522 fail to undertake the defense of the State, its employees, and officers, after a  
523 tender of defense has been duly made, the State may retain and withhold money  
524 to cover the Contractor's obligation, whether or not the Contractor is terminated  
525 for cause.

526

527 The Contractor shall pay all just claims for materials, supplies, tools, labor,  
528 and other just claims against the Contractor or any subcontractor in connection  
529 with this contract, and the payment bond or security will not be released by final  
530 acceptance and payment by the State unless all such claims are paid or  
531 released. The State may, but is not obligated to, withhold or retain as much of  
532 the monies due or to become due the Contractor under this contract considered  
533 necessary by the Engineer to cover such just claims until satisfactory proof of  
534 payment or the establishment of an acceptable payment plan.

535

## 536 **7.16 Disputes and Claims.**

537

538 **(a) Written Notice A Condition Precedent to Claim.** As a  
539 condition precedent to any claim for damages, or any matter dealing with  
540 contract price or contract time, the Contractor must give all notices of a  
541 potential claim as required by the contract documents including, but not  
542 limited to, the following Subsections of these General Provisions:

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- (1) 4.2 Changes
- (2) 4.3 Field Orders
- (3) 4.4 Duty of Contractor to Provide Change Proposals
- (4) 4.5 Contract Change Orders
- (5) 4.8 Differing Site Conditions
- (6) 5.4 Review and Acceptance Process
- (7) 6.5 Sample Submittals
- (8) 8.5 Contract Time

**(b) Contractor’s Duty to Maintain Accurate and Contemporaneous Records.** Upon delivering written notice of a potential claim as described in Subsection 7.16(a) Written Notice A Condition Precedent to Claim, the Contractor has the duty to support and substantiate all claims by maintaining accurate, contemporaneous records of the subject work and the time and costs thereof. The Engineer may direct the manner and the format in which such records must be prepared, maintained, and verified. The Contractor shall comply with such directives at no increase in contract price or contract time. Any directive from the Engineer regarding the manner and format for the keeping of records associated with the potential claim shall not in any way be deemed an agreement by the State regarding the validity of any element of the claim.

**(c) Contractor to Proceed with Work.** The Contractor shall at all times continue with performance of the contract in full compliance with the

575 directions of the Engineer. Continued performance by the Contractor shall  
576 not prejudice any claim for damages or any matter dealing with contract  
577 price or contract time provided that the notice of a potential claim is given  
578 in writing by the Contractor in the manner and within the time set forth in  
579 the contract documents.

580

581 **(d) Making of a Claim.** All Contractors' claims for damages or any  
582 matter dealing with contract price or contract time shall be submitted in  
583 writing to the Engineer. The written submission ("The Claim") shall be  
584 clearly identified and labeled as a claim. The Contractor shall sequentially  
585 number its claims in the chronological order submitted to the Engineer.  
586 No claim shall be valid if it is delivered to the Engineer after the date of  
587 final acceptance or later than 180 days after Contractor's delivery of its  
588 notice of potential claim, whichever comes first.

589

590 The claim shall, at a minimum, contain the following:

591

592 **(1)** A detailed description of the facts and circumstances that  
593 justify every element of the claim. The detailed description shall  
594 include, but is not limited to, providing all necessary dates,  
595 locations, and items of work affected by the claim.

596

597 **(2)** The specific provisions of the contract or laws which support  
598 the claim and a statement of the reasons why such provisions  
599 support the claim.

600

601 **(3)** A copy of the related written notice of potential claim  
602 required by Subsection 7.16(a) Written Notice A Condition  
603 Precedent to Claim.

604

605 **(4)** Any other documents that support the claim.

606

607 (5) If an adjustment of time for the performance of the contract  
608 is sought:

609  
610 (A) The specific days and dates for which it is sought.

611  
612 (B) The specific reasons the Contractor believes a time  
613 adjustment should be granted.

614  
615 (C) The specific provisions of the contract under which  
616 additional time is sought.

617  
618 (D) The Contractor's detailed analysis of its previously  
619 submitted time scaled logic diagram (TSLD) schedule and  
620 impact on the critical path.

621  
622 (6) If additional monetary compensation is sought, the claim  
623 cannot be in an amount greater than the Contractor would be  
624 entitled to under the terms, conditions, and limitations set forth in  
625 Section 9.6 Force Account Provisions and Compensation; however,  
626 the Engineer may determine the Contractor's entitlement, if any, in  
627 accordance with any payment method described in Section 4.6  
628 Methods of Price Adjustment. The exact amount sought and a  
629 breakdown of that amount into the following categories shall be  
630 provided to the Engineer:

631  
632 (a) **Labor.** Categories such as listing of individuals,  
633 description and location of work performed, classification,  
634 hours worked, wage rate, fringe benefits, and employee  
635 number if available.

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637 (b) **Materials.** Categories such as invoices, purchase  
638 orders, evidence of payment, descriptions, and quantities.

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**(c) Equipment.** Categories such as detailed description (make, model, year, attachments, and serial number), hours of use, and dates of use.

**(d) Contractor's Margin for Profit and Overhead.**

**(e)** Other categories as specified by the Contractor or the State.

**(7)** The claim shall be certified on behalf of the Contractor by an authorized representative, as follows:

Under penalty of law for submission of false claims, false statements, and misrepresentation, the undersigned,

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company)

hereby certifies that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the State of Hawaii is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

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Signature Date

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**(e) Subcontractor's Claim.** When the Subcontractor submits a claim to the Contractor and the Contractor, upon its review and investigation of said claim, concludes that the State is ultimately liable for payment of any part of said claim and the Contractor chooses to seek recovery against the State for all or any part of the Subcontractor's claim, the Contractor shall:

- (1)** Independently verify the basis for and amount of said claim.
- (2)** Limit said claim to only those portions for which the State may be liable.
- (3)** Submit said claim as a Contractor's claim, in accordance with this section.

**(f) Engineer's Review and Decision.** The Engineer shall review the claim and may request additional information, documentation, and other evidence, which the Contractor shall provide. The Engineer may conduct interviews with Contractor's employees and other persons having knowledge related to the claim.

The Engineer shall render a written decision on the claim after the claim is complete and fully documented, as follows:

- (1)** Within 60 days for claims equal to or less than \$50,000.
- (2)** Within 90 days on claims exceeding \$50,000.

If the Engineer does not issue a written decision within the time period described herein, then the Contractor may proceed as if the claim has been denied in its entirety. If the claim submittal is found to be

702 incomplete, the Contractor shall be notified to provide the additional  
703 information that is required. When this occurs, the Engineer's review time  
704 will be adjusted as deemed appropriate and the Contractor will be notified.

705

706 The decision will be sent to the Contractor by Certified Mail, Return  
707 Receipt Requested.

708

709 **(g) Appeal of the Engineer's Decision.**

710

711 **(1)** Any Contractor aggrieved by an adverse decision by the  
712 Engineer on a claim may appeal the decision to the Director, as  
713 head of the purchasing agency, as specified in the Hawaii  
714 Administrative Rules for Procurement Disputes.

715

716 **(2)** Appeals of the Engineer's decision must be filed in writing  
717 not later than 30 days after delivery of the Engineer's decision on  
718 the claim to the Contractor, or if no written decision is delivered,  
719 within 30 days after the deadline for the Engineer's decision. A  
720 copy of the notice of appeal of the Engineer's decision shall be  
721 delivered to the Engineer.

722

723 **(3)** The record on appeal by the Contractor to the Director shall  
724 be limited to the Claim as submitted by the Contractor described in  
725 Subsection 7.16(d) Making of a Claim, the Engineer's response to  
726 the claim, the project file, and any other material or evidence the  
727 Director, in the Director's discretion, believes may be useful in  
728 deciding the merits of the appeal.

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730 **(4)** In its notice of appeal of the Engineer's decision, the  
731 Contractor shall provide specific citations to the Engineer's decision  
732 and explanations as to why the Contractor believes the Engineer's  
733 decision was incorrect.

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(5) All controversies and claims which are appealed to the Director shall be decided by the Director within 90 days after the filing of the appeal by the Contractor; provided that:

(A) If the Director does not issue a written decision within 90 calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if the appeal was denied.

(B) The Director immediately furnishes a copy of the decision to the Contractor, by certified mail, return receipt requested or by any other method that provides evidence of receipt.

(C) Any such decision shall be final and conclusive, unless fraudulent or unless the Contractor brings an action seeking judicial review of the decision in a Hawaii circuit court within the six months from the date of receipt of the decision.

**(h) Contractor's Duty to Continue Work.** During the claim review and appeal process including any litigation in relation to the claim, the Contractor shall proceed diligently with performance of this contract, except where:

(1) The State has suspended the work or has terminated the contract for default of the Contractor or for the convenience of the State.



765                   **(2)**     There has been an alleged material breach of contract by  
766                   the State excusing further performance by the Contractor; provided  
767                   that in such event the Contractor shall proceed diligently with the  
768                   performance of the contract where the Director has made a written  
769                   determination that continuation of work under the contract is  
770                   essential to the public health and safety.

771

772     **7.17 Contaminated or Hazardous Items and Material; Regulated Items and**  
773     **Material; Waste.**

774

775                   **(a)     Known or Suspected Contaminated or Hazardous Items and**  
776                   **Material.**     If the contract documents have noted an area of known or  
777                   suspected contaminated or hazardous items or material within the project  
778                   limits, in the absence of specific orders from the Engineer or directions in  
779                   the contract documents, the Contractor shall report the discovery of such  
780                   items or material to the appropriate governmental agencies, cooperate  
781                   with all investigations and either remediate or remove and dispose of such  
782                   items or material as part of the contract price unless otherwise noted in  
783                   the contract documents. Upon encountering any such items or material  
784                   the Contractor shall immediately notify the Engineer.

785

786                   **(b)     Unknown Contaminated or Hazardous Items and Material.**     If  
787                   the Contractor encounters or exposes any items, material, or other  
788                   conditions within the worksite not previously known or suspected to be  
789                   contaminated or hazardous but which exhibits properties which may  
790                   indicate the presence of such items or material, the Contractor shall  
791                   immediately notify the Engineer. Claims by the Contractor for additional  
792                   money or time arising from work involving such items, material, or other  
793                   conditions, including the cost and time associated with notifying and  
794                   providing written reports to government agencies listed below, shall be  
795                   subject to the terms and conditions of Section 4.8 Differing Site  
796                   Conditions.

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**(c) Contractor’s Duty to Report.** Whenever the Contractor encounters or exposes any hazardous or contaminated items, material, or conditions at the worksite, whether the existence of which was previously known, suspected, or unknown, the Contractor shall notify the State Department of Health/HEER office, the Federal Environmental Protection Agency, the U.S. Coast Guard, the National Response Center, and other appropriate government agencies, and comply with any directives or instructions provided by them.

**(d) Material and Waste Brought to the Worksite.** The Contractor shall assume sole responsibility for

**(1)** The management of all regulated materials and items brought to the worksite.

**(2)** The management of all waste generated by or incidental to the Contractor’s operations, including, but not limited to, lubricants, antifreeze, engine fluids, paints, and solvents.

Management of such materials and items includes, but is not limited to, their transport, storage, handling, and disposal.

**(e) Reimbursement of State Expenses.** In addition to all other remedies provided by law or contract, the State may withhold from or recover from the Contractor any money it is required to expend to remediate, remove, or dispose of any such items and material, as well as the cost of any fines or impositions made by appropriate enforcement agencies arising from the management of such items and material, whether or not the Contractor exercised due care.

828 **7.18 Right to Audit Records, Records Maintenance, Retention, and**  
829 **Access.** Pursuant to Chapter 103D-317, H.R.S., the State, at reasonable  
830 times and places, may audit the books and records of a Contractor, prospective  
831 contractor, subcontractor, and prospective subcontractor relating to the  
832 Contractor's or subcontractor's cost or pricing data. Any such audits may be  
833 conducted by Federal and State employees or by consultants working on behalf  
834 of the State. The Contractor and subcontractor(s) shall maintain the books and  
835 records for a period of three years from the date of final payment under the  
836 contract.

837

838 The Contractor and its subcontractors shall, in accordance with generally  
839 acceptable accounting practices, maintain fiscal records and supporting  
840 documents and related files, papers, and reports that adequately reflect all direct  
841 and indirect expenditures and management and fiscal practices related to the  
842 Contractor and subcontractor's performance of work under this contract.

843

844 The representatives of the State (and Federal government representatives  
845 when federal funds are utilized) have the right to inspect and copy any book,  
846 document, paper, file, or other record that is related to the performance of the  
847 work of the Contractor and any subcontractor.

848

849 The Contractor shall provide full cooperation during any audit or inspection  
850 and shall insure that its subcontractors comply with this requirement. The  
851 Contractor shall bear all costs (including attorney's fees) of enforcement in the  
852 event of its or its subcontractor's failure or refusal to fully cooperate.

853

854 This right of inspection and audit shall not be limited to the required  
855 retention period but shall last as long as records are retained. The Contractor  
856 and subcontractor shall retain all records related to the Contractor and  
857 subcontractor's performance of work under this Agreement for three years from  
858 the date of final payment, except that if any litigation, claim, negotiation,  
859 investigation, audit, or other action involving the records has been started before

860 the expiration of the three year period, the Contractor and subcontractors shall  
861 retain the records until final resolution of all issues that arise from it or until the  
862 end of the three year retention period, whichever occurs later.

863

864 **7.19 Conflicts of Interest.** In all State or Federal-aid projects, no official or  
865 employee of the State or any other governmental instrumentality who is  
866 authorized in his official capacity to negotiate, make, accept, or approve or to  
867 take part in negotiating, making, accepting, or approving any contract or  
868 subcontract in connection with such project shall have, directly or indirectly, any  
869 financial or other personal interest in any such contract or subcontract. No  
870 engineer, attorney, appraiser, inspector, or other person performing services for  
871 the State or any governmental instrumentality in connection with the project shall  
872 have, directly or indirectly, a financial or other personal interest, other than his  
873 employment or retention by the State or other governmental instrumentality, in  
874 any contract or subcontract in connection with such project.

875

876 A violation of the provisions of this Section shall void the contract or  
877 agreement in respect of which such violation occurs, and no claim for loss or  
878 damage shall be made by the Contractor against the State or the Federal  
879 government.

880

881 **7.20 Sanitation Provisions.** The Contractor shall provide sanitation  
882 (lavatory) facilities at the work site sufficient to meet the needs of all workers and  
883 other persons anticipated to be on the work site during the progress of  
884 construction. Such facilities shall be maintained in a neat, sanitary condition at  
885 all times.

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**END OF ARTICLE VII**