ARTICLE IV - SCOPE OF WORK

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

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

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

(b) Orders and Directives. Except for minor change directives referred to in Subsection (a) above, only a duly issued change order or field order may alter the contract and work requirements. Any order, direction, instruction, interpretation, or determination, from the Engineer or any other person, that is not a field order or change order may be considered as a compensable change only if the Contractor gives the Engineer an oral notice not later than noon of the following working day of its intent to treat such order, direction, instruction, interpretation, or determination as a change directive. Such notice must be given before
the Contractor acts in conformity with the order, direction, instruction, interpretation, or determination. The oral notice shall be followed by a written notice of a potential claim that must be delivered to the Engineer within five days after communication of the order, direction, instruction, interpretation, or determination to the Contractor. The written notice of a potential claim shall state the date, circumstances, source of the order, direction, instruction, interpretation, or determination that the Contractor regards as a compensable change and provide a detailed justification for additional payment or time. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such order, direction, instruction, interpretation, or determination shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time, compensation, or contract price related to such work.

No more than ten working days after receipt of the written notice of a potential claim from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of its potential claim if a written response is not issued in the time established. If the Contractor objects to the Engineer’s position, it shall file a written claim with the Engineer within 30 days after delivery to the Engineer of the Contractor’s written notice of a potential claim. Failure by the Contractor to submit a written notice of a potential claim in the time specified waives all rights for an increase in contract time or compensation related to such work. The claim shall be determined as provided in Section 7.16 Disputes and Claims. In all cases, the Contractor shall proceed with the work as specified in the order, direction, instruction, interpretation, or determination immediately upon providing the Engineer with the oral notice described above, unless otherwise directed in writing by the Engineer.
(c) Penal Sum of the Surety Performance and Payment Bonds.

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

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

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

At any time without the issuance of a field order, the Engineer may request the Contractor supply the Engineer with a detailed proposal for an adjustment to the contract price, contract time, or both, for contemplated changes
in the work. The request for change proposal is not a directive for the Contractor to perform the work described therein.

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

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

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

If the Engineer refuses to accept the Contractor's entire proposal, the Engineer may issue a field order for all or part of the proposed work. If a field order has already been issued, the Engineer may issue a supplemental field order establishing new contract prices and further adjudgments to contract price and/or contract time for the ordered changes. If the Contractor disagrees with
any term, condition, or adjustment contained in such field order or supplemental field order, it shall follow the protest procedures set forth in and be subject to the other terms of Section 4.3 Field Orders.

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

4.6 Methods of Price Adjustment.

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

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

(2) By unit prices or other price adjustments specified in the contract or subsequently agreed upon before commencement of the pertinent performance.
(3) The Engineer may base the adjustment for a lump sum item on a calculated proportionate unit price. The Engineer will calculate the proportionate unit price by dividing the original contract lump sum price by the actual or original estimated quantity established by the contract documents.

(4) In such other lawful manner as the parties may mutually agree.

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

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

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

4.7 Variations in Estimated Quantities. Where the quantity of a unit price item in this contract is estimated on the proposal schedule and where the actual quantity of such pay item varies more than 15 percent above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party, providing the following conditions are met:
The adjustment shall be limited to any increase or decrease in direct costs; and

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

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

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

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

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

(1) A verbal notice within 12 hours of discovery or by 10 A.M. of the next working day, whichever is later, of the differing site condition; and
(2) Written notification of a potential claim to the Engineer no later than 5 days after the discovery of the differing site condition.

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

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

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

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

4.9 Maintenance of Traffic.

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

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

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

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

(b) **Airport and Harbor Traffic.** The Contractor shall provide for the free and unobstructed movement of aircrafts, vessels, passengers, aircraft and vessel crews and service personnel, and equipment in the operations area of the airport or harbor where the work is being performed to the greatest extent possible. The Contractor shall provide for uninterrupted operation of visual and electronic signals (including power supplies thereto) used in the guidance of aircraft and vessels while operating to, from, and upon the airport or harbor.
4.10 Construction and Maintenance of Detours. The Contractor shall construct and maintain detours for the use, convenience, and safety of all traffic. Unless indicated otherwise in the contract, all such work for the use, convenience, and safety of all traffic shall be considered incidental to the work of the various pay items of the contract and no additional payment will be allowed therefor.

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

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

4.12 Utilities and Services.

(a) Contractor’s Duty to Coordinate Utility Work. The Contractor shall contact the Hawaii One Call Center prior to any planned excavation and comply with all other requirements of 269E, H.R.S. In addition, the Contractor shall contact and cooperate with each affected utility owner in order for the work to progress on schedule and without unreasonable disruption of such utility services. If the work calls for permanent utility service installations or corrections to or modifications of existing utilities, the Contractor is responsible for scheduling and coordinating such work with appropriate utility owners. If the work required by the contract documents conflicts with the instructions, demands, or requirements of a utility owner, the Contractor shall notify the Engineer immediately. The Contractor shall furnish the Engineer with evidence that the Contractor has provided all relevant utility owners reasonable opportunity to review the drawings.
When the State has a separate agreement with utility owners for work to be performed within the worksite, at the direction of the Engineer, the Contractor shall make available all portions of the work and the worksite necessary for the utility owners to do their work.

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

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

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

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

(2) Acquaint all personnel working near utilities with the type, size, location, and depth of the utilities as well as the consequences that might result from disturbances.
(3) Take reasonable steps to protect the utilities and prevent service disruption.

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

(d) Temporary Utilities During Construction.

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

(2) Telephone: The Contractor shall have a telephone available for the State’s use for communications with field personnel. Cellular telephones are acceptable. The Contractor shall install the telephone immediately upon starting work and maintain service until
the project is completed. All costs associated with obtaining and maintaining telephone service shall be borne by the Contractor.

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

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

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

END OF ARTICLE IV