ARTICLE VI - CONTROL OF MATERIAL

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6.1 Source of Supply and Quality Requirements. The Contractor shall furnish, pay for, and install all materials required to complete the work, except materials that are designated in the contract documents to be furnished by the State. Materials shall be in new condition, subject to normal wear, at the time of final acceptance.

All materials proposed to be used may be inspected and tested at any time and place including, but not limited to, the source of supply and locations of manufacture and fabrication. When requested by the Engineer, the Contractor shall notify the Engineer of the Contractor's proposed sources of materials prior to delivery. At the request of the Engineer, the Contractor shall provide reasonable and adequate testing facilities and equipment for the Engineer at the inspection site at no increase in contract price or contract time.

6.2 Material Sources. Unless otherwise provided in the contract documents, (1) Contractor may use any suitable materials (such as stone, sand, gravel) found within the project limits in order to do the work, and (2) Contractor shall not remove any material (such as stone, sand, gravel) from the project limits without the written permission of the Engineer. Such permission will not be considered a change and may be revoked at any time for any reason by the Engineer at no increase in contract price or contract time.

The contract documents or Engineer may make available to the Contractor the option to use material from sources made available by the State. Designation of a source for material is not a representation by the Engineer of the quantity or quality of material obtainable or the method, equipment, or work required to obtain material from the source. The Contractor is not obligated to use material from such sources. The Contractor bears all costs of using such material and assumes the risk that such material does not conform to contract requirements.

6.3 Unauthorized Excavation. Unless otherwise expressly directed or authorized by the contract documents, Contractor shall not excavate beyond the excavation limits for the purpose of obtaining materials. The site disturbed by unauthorized excavation shall be returned to the condition existing before such unauthorized excavation at no increase in contract price or contract time. Any unauthorized excavation shall be filled, at the direction of the Engineer, with either the material taken out or a substitute material selected by the Engineer.

equipment data required by the contract documents or by the Engineer are exclusively for the benefit of the State's quality control monitoring of the project. Any statement or representation by the Engineer that any submitted sample or equipment data is "ACCEPTED", "APPROVED", or other words to similar effect, shall not be deemed conclusive that the material and equipment data for which a sample was submitted will conform to the contract requirements when incorporated into the work. The 'ACCEPTANCE" or "APPROVAL" of any sample by the Engineer does not change or modify any contract requirements.

Unless otherwise specified, all testing of materials, whether or not incorporated into the work, shall be at the Contractor's expense as part of the contract price. The Engineer may conduct tests of or take samples of any materials at any time to verify conformance with the requirements of the contract documents. The Contractor shall collect and forward samples and provide other assistance when requested by the Engineer. In all cases, the Contractor shall furnish the required samples at no increase in contract price or contract time. The Contractor shall not be entitled to payment for work that incorporates materials required to be tested or inspected until the Engineer completes the tests or inspections. Where samples are required from the completed work, the Contractor shall cut and furnish samples from the completed work at the sites and quantities designated by the Engineer. The work where such sample has been removed shall be restored with new material conforming to the contract

requirements or other material acceptable to the Engineer at no increase in contract price or contract time.

Tests of the material samples will be made in accordance with the contract specifications, or in the absence thereof, the latest standards of HDOT Hawaii Test Methods, AASHTO, ASTM, or other recognized material organizations. References to HDOT Hawaii Test Method means "Hawaii Test Methods", published by the State of Hawaii, Department of Transportation, Highways Division, Materials Testing and Research Branch. The Engineer shall decide:

(1) The tests to be conducted and standards to be applied;

(2) Whether a submitted material sample passes the tests and meets the standards; and

(3) Whether a submitted material sample shall be retested.

Each sample submitted shall have a label indicating project title and number, date sampled, the material represented, its place of origin, the names of the producers and suppliers, the Contractor, and the portion of the work for which the material is intended. Samples shall be marked to indicate where the materials represented are required by the contract documents.

A letter in duplicate shall accompany each delivery of samples and shall contain a list of the samples and the same information required on the labels accompanying each sample.

6.5 Sample Submittals.

(a) Contractor's Duty. When sample submittals are required by the contract documents, the Contractor shall review, approve, indicate its approval, and submit to the Engineer samples of the materials to be used

in the work. It is the responsibility of the Contractor to submit required material and color samples for review at the earliest possible date after the date of award. Delays caused by the failure of the Contractor to submit material and color samples will not be considered as justifiable reasons for contract time extension or additional compensation.

(b) Deviations. The Contractor shall include, with the submittal of samples, written notification of and shall clearly identify all deviations from the contract documents. Failure to so notify the Engineer of and identify such deviations shall be grounds for the subsequent rejection of the related work or materials, notwithstanding that the sample upon its submittal was accepted by the Engineer. If the deviations are not acceptable to the Engineer, the Contractor shall be required to furnish the samples as specified or indicated on the contract documents at no increase in contract price or time.

(c) Review Process. The Engineer will inspect or test samples and communicate the results of the inspection or test within 30 days of receipt, unless otherwise agreed between the Contractor and the Engineer, or as stated in the contract documents. Should the Engineer partially or totally reject the test samples, the Contractor shall modify the sample, as required by the Engineer, and resubmit the item within 15 days. At this time, the review and acceptance cycle described above shall begin again and repeat each time a test sample is returned to the Contractor for modification. If the volumes of samples submitted at any time for review is unusually large, the Contractor may inform the Engineer of its preferred order for review, and the Engineer will use reasonable efforts to accommodate the Contractor's priorities.

If the Engineer notifies the Contractor that a sample does not conform to the contract documents, the Contractor shall promptly submit a sample conforming to the requirements of the contract documents, indicating in writing on the transmittal and the subject sample what portions of the resubmittal have been altered.

No mark or notation made by the Engineer on or accompanying the return of any sample to the Contractor shall be considered a request or order for a change or extra work. If the Contractor believes any such mark or notation constitutes a request for a change or extra work for which it is entitled to an adjustment in contract price, contract time, or both, the Contractor must follow the procedures established in Subsection 4.2(b) Orders and Directives or else lose its right to claim for an adjustment.

(d) Conformance of Material to Submittal. After a material submittal has been accepted by the Engineer, the Contractor shall provide materials for the work that conform to such submittal. Materials that do not conform to such submittal are non-conforming material in accordance with Section 6.8 Non-Conforming Materials, even if they otherwise meet the contract requirements. If the Contractor intends to substitute a material in place of a material for which a submittal has been accepted, the Contractor shall submit the substitute material in accordance with the sampling and testing procedures described herein. The Contractor shall not use the substitute material until the Engineer accepts it.

6.6 Notice of Change. If, during the course of the work, the Contractor intends to change the source of supply of any previously submitted material or the location of any manufacturing or fabrication plant, the Contractor shall provide the Engineer written notice of such intended change not less than ten days before the change is made. The Engineer may require that the Contractor repeat the submittal process, in accordance with this Article VI – Control of Material, for any such material.

6.7 Certificate of Compliance. In addition to or instead of the submission of material samples for inspection or testing, the Engineer or the contract

documents may require the Contractor to submit to the Engineer a Certificate of Compliance from the manufacturer, supplier, or both.

A Certificate of Compliance shall be an English language document containing:

(1) A description of the material supplied;

(2) Means of material identification, including, but not limited to, label, lot number, heat number, batches, or marking including the respective quantities of each material supplied for the work;

(3) A statement that the material complies in all respects with the requirements of the cited specifications within the contract documents;

(4) When required by the Engineer, test results confirming that the material complies in all respect with the requirements of the contract documents; and

(5) The name, title, and signature of the authorized person acting on behalf of the manufacturer or the supplier of the material, the date of the signature, and the name and address of the manufacturer or supplier of the material.

6.8 Non-Conforming Materials. All materials not conforming to the contract requirements, whether in place or not, shall be promptly removed from the site of the work when directed by the Engineer in writing. If the Contractor fails to comply forthwith with any order of the Engineer made under the provisions of this subsection, the Engineer shall have the authority to remove and replace non-conforming materials and charge the removal and replacement to the Contractor.

6.9 State-Furnished Material. The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the State. The contract documents or the Engineer will establish the time and means of delivery or the turning over of State-furnished materials. Unless otherwise specified, the cost of pick up and transport to the work site of such materials is included in the contract price.

Unless otherwise stated in the contract documents, it shall be conclusively presumed that State-furnished materials conform to the contract documents as of the time of delivery to the Contractor.

Upon receipt, the Contractor shall inventory, store, inspect, protect, distribute, and install State-furnished material at its risk and cost.

6.10 Payment for Deleted Materials.

(a) Canceled Orders. If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the Engineer, the Contractor shall use its best efforts in a timely manner to cancel the order. The State will pay reasonable cancellation charges required by the supplier. The Contractor will be paid a 10 percent markup on all reasonable cancellation charges for compensation for overhead and profit.

(b) Returned Materials. If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, if such material is returnable to the supplier and the Engineer so directs, the material shall be returned. After the Contractor returns acceptable material to the supplier, the State will pay for the reasonable charges made by the supplier or other source for the return of the material. The Contractor shall be paid a 10 percent markup on the reasonable charges

made by the supplier or other source for returning the material for compensation for overhead and profit. The cost to the Contractor for handling the returned material will be paid as provided in Section 4.6 Methods of Price Adjustment.

(c) Uncancelled Material. If orders for acceptable material that was deleted cannot be canceled at a reasonable cost or returned, it will be paid for at the actual cost charged by the material supplier to the Contractor including a markup for overhead and profit of 10 percent. In such cases the material paid for shall become the property of the State and the cost of further storage and handling will be paid as provided in Section 4.6 Methods of Price Adjustment.

All charges the Contractor proposes for the acceptable material that was deleted shall be properly itemized and supported by sufficient substantiating legible data to permit evaluation. The Engineer will determine whether the proposal is acceptable.

6.11 (Reserved).

6.12 Assignment Of Antitrust Claims For Overcharges For Goods and Materials Purchased.

Contractor and owner recognize that, in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the owner. Therefore, Contractor hereby assigns to owner any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this order or contract and any contract change order. In addition, Contractor warrants and represents that each of its first tier suppliers and subcontractors shall assign any and all such claims to owner, subject to the aforementioned exception.

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258	6.13 Substitution Of Materials and Equipment After Bid Opening.
259	Substitution of material or equipment will not be allowed after the bid opening
260	date except under the following circumstances:
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262	(1) A specified or pre-qualified item is delayed by an
263	unforeseeable event beyond the control of the Contractor which
264	would impact the timely completion of the project.
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266	(2) A specified or pre-qualified item is no longer being
267	manufactured or is no longer reasonably commercially available.
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269	(3) A specified or pre-qualified item is found to be unsuitable for
270	reasons beyond the control of the Contractor.
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272	(4) When a manufacturer or supplier of a pre-qualified or
273	specified item makes available a suitable item determined by the
274	Engineer to be equal to or better than the item prequalified or
275	specified.
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277	(5) Under such other terms and conditions acceptable to the
278	Engineer.
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280	Every substitution request shall be fully explained in writing by the
281	Contractor and shall include the justification, the quantities and unit prices
282	involved, quotations, and such other documents as are deemed necessary to
283	support the request. Any savings in cost will accrue to the State.
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285	The burden of proof as to the comparative quality and suitability of
286	alternate equipment, articles, or materials shall be upon the Contractor. The
287	Contractor shall furnish, at no increase in contract price or contract time, all

information required by the Engineer.

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290	The Engineer reserves the right to deny any request the Engineer deems
291	irregular or not in the best interest of the State and shall be the sole judge of the
292	comparative quality and suitability of alternate equipment, articles, or materials.
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294	END OF ARTICLE VI