ARTICLE VII – LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

7.1 Insurance Requirements.

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

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

The Contractor shall obtain all required insurance as part of the contract price. Where there is a requirement for the State of Hawaii and its officers and employees to be named as additional insureds under any Contractor’s insurance policy, before the State of Hawaii issues the Notice to Proceed, the Contractor shall obtain and submit to the Engineer a Certificate of Insurance and a written policy endorsement that confirms the State of Hawaii and its officers and employees are additional insureds for the specific State project number and project title under such insurance policies. The written policy endorsement must be issued by the insurance company insuring the Contractor for the specified policy type or by an agent of such insurance company who is vested with the authority to issue a written policy endorsement. The insurer’s agent shall also submit
written confirmation of such authority to bind the insurer. Any delays in
the issuance of the Notice to Proceed attributed to the failure to obtain the
proof of the State of Hawaii and its officers and employees’ additional
insured status shall be charged to the Contractor.

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

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

Nothing contained in these insurance requirements is to be
construed as limiting the extent of Contractor’s responsibility for payment
of damages resulting from its operations under this contract, including the
Contractor’s obligation to pay liquidated damages, nor shall it affect the
Contractor’s separate and independent duty to defend, indemnify, and
hold the State harmless pursuant to other provisions of this contract. In no
instance will the State’s exercise of an option to occupy and use
completed portions of the work relieve the Contractor of its obligation to
maintain the required insurance until the date of final acceptance of the work.

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

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

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

(1) Worker’s Compensation. The Contractor shall obtain worker’s compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker’s Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.
(2) **Auto Liability.** The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned, and hired autos with a combined single limit of not less than $1,000,000 per occurrence for bodily injury and property damage with the State of Hawaii named as additional insured. Refer to SPECIAL CONDITIONS for any additional requirements.

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

   (A) Products – Completed/Operations Aggregate,

   (B) Personal & Advertising Injury, and

   (C) Bodily Injury & Property Damage.

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

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

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

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

(d) Subcontractor Insurance. The Contractor shall either:

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

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

In the absence of language in the certificate excluding coverage for subcontractors, it will be understood that the Contractor’s insurance covers all aspects of the work whether performed by the Contractor or any of its subcontractors.
(e) Self-Insured Retention. The Contractor shall be permitted, in cooperation with its insurers, to maintain a self-insured retention for up to 25 percent of the per occurrence combined single limits of the commercial general liability and the automobile liability policies required by the contract documents.

7.2 Employment of State of Hawaii Residents.

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

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

(2) The Contractor and any applicable subcontractors shall maintain records such as certified payrolls for laborers and mechanics who perform work at the site and timesheets for all other employees who performed work on the project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and applicable subcontractors who performed work on the project to validate compliance with this section. The Contractor and applicable
subcontractors shall maintain, retain, and provide the Engineer access to these records at all times during the work as well as in accordance with Section 9.12 Records, Accounts, and Documents.

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

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

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

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

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

The terms and conditions of any permit or license required for performance of the work, whether or not issued in the name of the Contractor, are incorporated into the contract. Compliance with such terms and conditions are duties owed by the Contractor to the State under the contract. Notwithstanding the enforcement authority of the permitting or licensing agency,
whether or not a State agency, non-compliance by the Contractor with any term or condition of such license or permit shall be deemed non-compliance with the contract and may constitute grounds for default.

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

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

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

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

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

7.6 Overtime and Night Payment for State Inspection Service.
(a) State’s Responsibility for State’s Cost. The State shall be responsible for overtime or night work payment for State’s staff and inspection personnel, including consultants, when the contract requires overtime or night work to be performed or directs the Contractor to work additional shifts or overtime for the State’s convenience.

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

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

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

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

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

(c) Payment for Inspection Service. The monies due the State for costs described herein shall be deducted from the monies due or to
become due the Contractor. The Contractor shall not pay the State’s employees and consultants directly.

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

7.8 Assignment or Change of Name.

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

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

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

(1) The transferee assumes all of the Contractor’s obligation.

(2) The Contractor remains liable for all obligations under the contract but waives all rights under the contract against the State.
The Contractor shall continue to furnish, and the transferee shall also furnish, all required bonds.

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

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

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

The Contractor shall immediately notify the Engineer in writing of any orders, directives, notices, decrees, or warnings issued by any governmental agency to the Contractor, its subcontractors, vendors, and suppliers that a violation of law, rule, regulation, or permit or license requirement is alleged to have occurred or is occurring in connection with the work.
The Contractor shall defend, protect, hold harmless, compensate, and indemnify the State, its officers, and employees against any claim or liability arising from or based on the violation of any laws, ordinances, rules and regulations, orders or decrees, or the terms and conditions of any permits and licenses, whether such orders or decrees are directed to the Contractor, its subcontractors, vendors and suppliers, or to the State.

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

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

7.12 Safety: Accident Prevention.

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

(b) The Contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or
under conditions which are unsanitary or hazardous or dangerous to
his/her health or safety, as determined under construction safety and
health standards promulgated by the Federal, State, and local authorities.

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

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

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

7.13 Protection of Persons and Property.

(a) Contractor's Responsibility for Damage to Property. All
damage, injury, or loss to any property caused during the course of or
arising out of the work, whether or not caused by negligent acts or
omissions, shall be the responsibility of the Contractor and shall be
remedied promptly by the Contractor. This provision shall not affect the
Contractor's legal rights of subrogation, contribution, and indemnity to
recover the costs of remedial measures and other damages to which it
may be entitled.
(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.
(2) Any person is treated or evacuated from the work site for medical reasons.

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

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

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

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

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

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

The Contractor shall follow:

(1) Guidelines in the City and County of Honolulu's "Best Management Practices Manual for Construction Sites in Honolulu", 7-15
in developing, installing, and maintaining BMPs for all projects;

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

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


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

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

The Contractor shall defend, hold harmless, compensate, and indemnify the State, its employees, and officers against any loss, demand, claim, liability, suit, action, cause of action, judgment, cost, and expenses, including attorney’s fees, based upon personal injury, death, or property damage which arise out of
the Contractor’s performance under the contract, including the operations and
performance of one or more subcontractors, whether or not a lawsuit is filed
against the State and whether or not the Contractor is named as a party to any
such lawsuit, unless and until a court of competent jurisdiction makes a final non-
reviewable determination that the personal injury, death, or property damage was
caused solely by the negligence of the State.

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

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

7.16 Disputes and Claims.

(a) Written Notice A Condition Precedent to Claim. As a
condition precedent to any claim for damages, or any matter dealing with
contract price or contract time, the Contractor must give all notices of a
potential claim as required by the contract documents including, but not
limited to, the following Subsections of these General Provisions:
(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
directions of the Engineer. Continued performance by the Contractor shall not prejudice any claim for damages or any matter dealing with contract price or contract time provided that the notice of a potential claim is given in writing by the Contractor in the manner and within the time set forth in the contract documents.

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

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

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

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

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

(4) Any other documents that support the claim.
If an adjustment of time for the performance of the contract is sought:

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

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

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

(D) The Contractor’s detailed analysis of its previously submitted time scaled logic diagram (TS LD) schedule and impact on the critical path.

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

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

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

_________________________  _____________________
Signature Date
(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
incomplete, the Contractor shall be notified to provide the additional information that is required. When this occurs, the Engineer’s review time will be adjusted as deemed appropriate and the Contractor will be notified.

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

(g) Appeal of the Engineer's Decision.

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

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

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

(4) In its notice of appeal of the Engineer’s decision, the Contractor shall provide specific citations to the Engineer’s decision and explanations as to why the Contractor believes the Engineer’s decision was incorrect.
(5) All controversies and claims which are appealed to the  
Director shall be decided by the Director within 90 days after the  
filin 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.
(2) There has been an alleged material breach of contract by the State excusing further performance by the Contractor; provided that in such event the Contractor shall proceed diligently with the performance of the contract where the Director has made a written determination that continuation of work under the contract is essential to the public health and safety.

7.17 Contaminated or Hazardous Items and Material; Regulated Items and Material; Waste.

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

(b) Unknown Contaminated or Hazardous Items and Material. If the Contractor encounters or exposes any items, material, or other conditions within the worksite not previously known or suspected to be contaminated or hazardous but which exhibits properties which may indicate the presence of such items or material, the Contractor shall immediately notify the Engineer. Claims by the Contractor for additional money or time arising from work involving such items, material, or other conditions, including the cost and time associated with notifying and providing written reports to government agencies listed below, shall be subject to the terms and conditions of Section 4.8 Differing Site Conditions.
(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.
7.18 Right to Audit Records, Records Maintenance, Retention, and Access. Pursuant to Chapter 103D-317, H.R.S., the State, at reasonable times and places, may audit the books and records of a Contractor, prospective contractor, subcontractor, and prospective subcontractor relating to the Contractor’s or subcontractor’s cost or pricing data. Any such audits may be conducted by Federal and State employees or by consultants working on behalf of the State. The Contractor and subcontractor(s) shall maintain the books and records for a period of three years from the date of final payment under the contract.

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

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

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

This right of inspection and audit shall not be limited to the required retention period but shall last as long as records are retained. The Contractor and subcontractor shall retain all records related to the Contractor and subcontractor’s performance of work under this Agreement for three years from the date of final payment, except that if any litigation, claim, negotiation, investigation, audit, or other action involving the records has been started before
the expiration of the three year period, the Contractor and subcontractors shall retain the records until final resolution of all issues that arise from it or until the end of the three year retention period, whichever occurs later.

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

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

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

END OF ARTICLE VII