SCHOOL FACILITIES AUTHORITY

November 13, 2026

REQUEST FOR PROPOSALS

RFP No.: SFA-PCC27-01

SEALED PROPOSALS
TO PROVIDE

PREQUALIFIED CONTRACTORS TO PROVIDE GENERAL Contractor A and/or B SERVICES STATEWIDE

FOR THE SCHOOL FACILITIES AUTHORITY

will be received through the State of Hawaii eProcurement System (HIePRO) at https://hiepro.ehawaii.gov/welcome.html until 2:00 p.m., Hawaii Standard Time (HST)

on

December 14, 2026

Offerors interested in responding to this electronic solicitation must be registered on the HIePRO (https://hiepro.ehawaii.gov/welcome.html) in order to participate in this procurement. Registration is free. Once registered, Offerors can login to view and respond to the HIePRO solicitation.

Questions relating to this solicitation may be directed to the Procurement Officer via email at procurement@hisfa.org

SECTION 00 01 10

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Hawai‘i School Facilities Authority
RFP SFA-PCC27-01
Prequalified Construction Contractors

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REQUEST FOR PROPOSAL

1. SCHOOL FACILTIES AUTHORITY OVERVIEW

The School Facilities Authority (SFA) is responsible for providing, creating, and modernizing the learning and living environments within Hawai'i's public education system. More information is available at https://www.hisfa.org/.

2. RFP PURPOSE

SFA manages a variety of capital improvement and school facility projects across all Hawai'ian Islands. This solicitation seeks to establish a prequalified vendor list for General Contractor A and/or B licensed work at various facilities statewide. Contractors selected under this RFP will be included in a prequalified pool and invited to submit proposals for specific projects as they arise.

SFA is establishing this prequalified pool as part of an alternative project delivery strategy intended to accelerate the delivery of new schools and other priority school facility projects. The need for additional educational facilities in many communities is immediate, and traditional project-by-project procurement and delivery methods may require timelines that are not sufficiently responsive to those needs. By establishing a pool of qualified contractors in advance, SFA intends to reduce repetitive procurement activities, improve contractor readiness, and shorten the time required to move projects from planning and design into construction.

This approach is intended to provide SFA with greater flexibility and responsiveness while preserving competition, contractor qualification standards, fiscal controls, and compliance with applicable procurement laws and requirements. The prequalified pool is one component of SFA's broader strategy to deliver needed school capacity more efficiently and provide communities with new and improved educational facilities sooner.

Projects are expected to range from $150,000.00 to $200,000,000.00, though individual project values may vary. The maximum aggregate value awarded to each Offeror under this solicitation will be $750,000,000.00, based on the estimated value of five potential projects. SFA reserves the right, at its sole discretion, to procure General Contractor A and/or B work outside of this prequalified pool.

3. NOTICE TO OFFERORS

In accordance with Section 103D-303, Hawai'i Revised Statutes (HRS) of the Hawai'i Public Procurement Code, SFA is issuing this Request for Proposals. All work performed under Contracts awarded from this RFP and performed for projects will be governed by the requirements outlined in the Division 00 documents, including the section 00 72 00 General Conditions, Supplementary Conditions in sections 00 73 16 through 00 73 63, and AG General Conditions included in section 00 73 73.

By submitting a proposal, Offerors agree to the terms of Division 00 requirements in this RFP. Requests for changes or questions regarding these terms must be submitted before the deadline for written questions. Only changes authorized by SFA and issued via addendum will be accepted.

Proposals must include a completed Proposal Form 1. Upon Contract award, Contractors must comply with the Responsibility of Offerors as outlined in Section 3-122-112, Hawai'i Administrative Rules (HAR).

SFA makes no guarantee regarding the minimum amount of work to be awarded to any of the prequalified Contractors resulting from this RFP.

4. PROCUREMENT AUTHORITY

This procurement is conducted as a competitive proposal under Section 103D-303 of the HRS and Title 3, Subtitle 11, Chapter 122, Subchapter 6 of the HAR. Relevant provisions of Chapter 103D, HRS, and associated Administrative Rules are incorporated by reference and are part of this RFP.

5. ISSUING OFFICE AND RFP CONTACT PERSON

The individual listed below is the sole point of contact for this RFP. Unauthorized communication with other SFA personnel from the date of RFP release until Offeror selection may result in disqualification.

Offerors and interested persons shall direct to the POC all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting contract. The POC designated by the State of Hawai'i, School Facilities Authority, is:

Issuing Office:
State of Hawai'i
School Facilities Authority
2759 South King Street, Room H201
Honolulu, HI 96826

RFP Point of Contact (POC):
Procurement Officer
Email: procurement@hisfa.org

6. ORGANIZATION OF THE REQUEST FOR PROPOSAL (RFP)

This RFP is organized into 14 sections with supporting appendices, as follows:

Section	Description
00 11 19	Provides Notice to Offerors, a general overview on the organization and purpose of this RFP, background information on the critical need for service, authorities relating to the issuance of the RFP, and the RFP procurement timetable.
00 21 16	Describes the required format and content for the Offeror's submittal and establishes requirements for the RFP. Describes how Proposals will be evaluated by SFA.

00 25 16	Preproposal conference meeting notice
00 42 00	Includes required proposal forms
00 43 93	Proposal Submittal Checklist
00 45 46	HCE, DCCA, tax and statutory compliance certifications
00 61 13	Project performance and payment bond forms
00 72 00	Governing construction general conditions
00 73 16	Insurance Requirements
00 73 43	Wage Rate Requirements
00 73 49	Labor Stabilization Agreement
00 73 63	Security Requirements
00 73 73	Statutory Requirements

7. RFP KEY DATES

Except as noted, the following schedule represents SFA's best estimate. All times indicated reflect Hawai'i Standard Time (HST). If any component of this schedule is delayed, the rest of the schedule will likely be amended by the same number of days. SFA reserves the right to amend or revise the timetable without prior written notice when such revision or amendment is in SFA's best interest.

Please reference *section 00 21 16* of this RFP for Proposal submittal requirements.

Public Notice announcing Request for Proposals (RFP) via Hawai'i Electronic Procurement System (HIePRO):	November 13, 2026
Pre-proposal Conference (virtually via MS Teams)	10:00 a.m., November 20, 2026
Deadline for submission of written questions	By 2:00 p.m. November 30, 2026
SFA's responses to written questions	On or about December 6, 2026
Electronic proposal on HIePRO: **THERE ARE NO EXCEPTIONS TO THIS PROPOSAL DUE DATE UNLESS THE DATE IS AMENDED IN WRITING BY SFA.**	2:00 p.m., December 14, 2026
Evaluation of Proposals	December 18, 2026
Best and Final Offer (BAFO) (Optional solely at SFA's discretion) *	On or about December 23, 2026
Contractors Selected (if no BAFO)	On or about December 23, 2026
Contracts Awarded	On or about December 23, 2026
Earliest Contract Commencement Date	On or about December 31, 2026

*In the event of a BAFO, an addendum will be issued with a new timeline.

8. PROCUREMENT PROCESS OVERVIEW

This procurement is conducted under Subchapter 6, Chapter 3-122, HAR, and Section 103D-303, HRS. The process begins with the issuance of this RFP, followed by responses to written inquiries, and the preparation and submission of Proposals. After evaluation, the Evaluation Committee (EC) will recommend the most advantageous Proposals – i.e., those scoring 60% or better during evaluation – to the Procurement Officer, who may award Contracts to be included in the prequalified pool. SFA reserves

the right to cancel this solicitation or reject any or all offers in whole or in part. This RFP, all addenda, and the Proposal of each successful Offeror will form the Contract between SFA and each successful Offeror.

The terms “Offeror” and “Bidder” are synonymous when used in this and all other related solicitation documents.

9. PREPARATION FOR RFP SUBMISSION

1. Offeror Responsibilities

The submission of a Proposal shall constitute an incontrovertible representation by the Offeror of compliance with the requirements of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions for the performance of the anticipated project work. Failure to comply with the requirements of this subsection may be grounds for the rejection of the Proposal or termination of the Contract.

Before submitting a Proposal, each Offeror shall:

a. Examine the solicitation documents thoroughly for defects and questionable or objectionable matter. Solicitation documents include this RFP, any attachments, and any other relevant documentation.

b. Submit their written comments concerning any defects and questionable or objectionable matter to SFA **prior** to the due date for written questions, or as amended. This will allow issuance of any necessary amendments to the RFP. It will also help prevent the opening of any defective proposal and exposure of the Offeror’s Proposal upon which Award could not be made. If an Offeror, after submitting written comments or questions during the question period, believes they are aggrieved in connection with the solicitation, they are entitled to submit a protest pursuant to Section 103D-701, HRS.

c. Know and comply with applicable Federal, State, and County laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the anticipated project work.

d. Meet all of the qualifications required by this RFP. Failure to provide the Required Documents, as specified in *section 00 21 16, subsection 2 Qualifying Requirements*, or failure to meet minimum mandatory requirements, will most likely have adverse effects on the evaluation of Offeror’s Proposal and may result in a “No Pass” evaluation.

e. Obtain and pay for all permits (if applicable), certificates, and licenses required and necessary for the performance of the work specified herein prior to commencing any work under this Contract; shall post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of the work specified.

f. Comply with all business registration requirements prior to commencing work under this Contract. Offerors shall be incorporated or organized under the laws of the State and be registered to do business in the State as a separate

branch or division that is capable of fully performing under the Contract. *See Compliance Documents in section 00 45 46.*

g. Submit the "Sealed Proposal Form," "Hawai'i Business," or "Compliant Non-Hawai'i Business" certificates, and any other documents required by the Proposal documents. *See Compliance Documents in section 00 45 46.*

2. Instruction to Offerors

a. General Conditions in section 00 72 00, Supplementary Conditions in sections 00 73 16 through 00 73 63, and Statutory Requirements in section 00 73 73 set forth additional terms and conditions for the RFP and Award Process. These sections will be part of the Contract documents by which SFA and each prequalified Contractor will be bound. Offerors are directed to these sections for Contract and statutory requirements and for execution of Contract requirements.

b. **Economy of Presentation:** Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent with and appropriate to the requirements of this RFP. Emphasis shall be on completeness and clarity and content. If any additional information is required by SFA regarding any aspects of the Offeror's Proposal, it shall be provided within five (5) business days. All submitted Proposals shall become the property of the State of Hawai'i.

c. **Price:** Awards will be of an indefinite quantity, and prices for each project awarded shall be determined through the competitive award as set forth in section 00 72 00 of this RFP.

d. **Complete** Offer **Form (OF-1).** *See* Proposal Form 1. Proposals shall be submitted using the Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable. Offeror shall indicate its exact legal name in the appropriate spaces. Failure to do so may delay proper execution of the Contract to participate in the pool of prequalified Contractors resulting from this RFP.

10. Confidentiality of Material

All material given to or made available to a Contractor, which is identified as proprietary or confidential information, will be safeguarded by the Contractor and shall not be disclosed to any individual or organization without the prior written approval of the State.

All information, data, or other material provided by the Offerors or the prequalified Contractors to the State shall be subject to the Uniform Information Practices Act, Chapter 92F, HRS. The Offeror shall designate in writing to the Procurement Officer those portions of its proposal or any subsequent submittal that are trade secrets or other proprietary data that the Offeror desires to remain confidential, subject to §3-122-58, HAR, in the case of an RFP. The Offeror shall state in its written communication to SFA Procurement Officer, the reason(s) for designating the material as confidential, for example, trade secrets. The Offeror shall submit the material designated as confidential in such manner that the material is readily separable from the offer to facilitate inspection of the non-confidential portion of the offer.

If a request is made to inspect the confidential material, the inspection shall be subject to written determination by the Office of the Attorney General in accordance with Chapter 92F, HRS. If it is determined that the material designated as confidential is subject to disclosure, the material shall be open to public inspection, unless the Offeror protests under Chapter 3-126, HAR. If the request to inspect the confidential material is denied, the decision may be appealed to the Office of Information Practices in accordance with §92F-15.5, HRS.

11. Required Review/Written Inquiries

All questions must be submitted through the Hawai'i State eProcurement System (HIePRO). Questions must be submitted by the question deadline date and time shown in subsection 7 RFP Key Dates. Answers will be given via the Hawai'i State eProcurement System (HIePRO) site as noted in subsection 7 RFP Key Dates.

Offerors are cautioned about including context in questions that may reveal the source of questions. The identity of potential Offerors will not be published with the answers, but the text of questions will be restated, to the extent possible, to exclude information identifying potential Offerors.

It is the Offeror's responsibility to carefully review this solicitation for defects and questionable or objectionable matters. Solicitation documents include this RFP, any attachments, and any other relevant documentation.

Comments concerning defects, discrepancies, omissions, questionable or objectionable matter, or questions related to this RFP must be made through HIePRO to allow issuance of any necessary amendments to the RFP. It will also help prevent exposure of Offeror's Proposal prepared in response to a defective or inaccurate solicitation upon which an Award could not be made.

Comments related to this solicitation shall be communicated to the POC, through HIePRO, by the date and time established for submission of written questions to ensure an official response. SFA will not respond to verbal or informal questions.

Such comments shall contain pertinent information to identify the prospective Offeror, its telephone number, e-mail address, the RFP number, as well as reference to the specific page, section, and/or paragraph as applicable.

SFA's responses to the prospective Offerors' written questions received by the scheduled date shall be compiled, shall omit reference to the source(s) of the questions, shall be issued as an addendum to the RFP through HIePRO and shall become a part of the RFP. SFA will publish the questions as they are submitted including any background information provided with the question through HIePRO. SFA at its sole discretion may omit questions which may be combined or paraphrase questions and background content for clarity.

Offerors who have registered on HIePRO will receive notification of any addenda from the date the Registration Form is received. SFA is not responsible for delays or non-receipt of such responses or any communications by the prospective Offerors.

If an Offeror submits a question after the scheduled date, SFA may answer the question but does not guarantee that the answer will be provided prior to the Proposal due date.

If an Offeror, after submitting written comments or questions during the question period, believes they are aggrieved in connection with the solicitation, they are entitled to submit a protest pursuant to Section 103D-701, HRS.

12. RFP Addenda; Clarifications

SFA may periodically issue an addendum that may increase or decrease the Contract scope of work, timelines, provisions, or conditions. SFA will make the addenda available to the Offerors through HIePRO. SFA accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor the Hawai'i State eProcurement System (HIePRO) to obtain RFP addenda or other information relating to the RFP.

SFA reserves the right to amend this RFP at any time prior to the closing date for Best and Final Offers. All addenda issued shall be incorporated into the resulting Contracts with prequalified Contractors.

13. Cancellation of RFP; Rejection of Proposals

This RFP may be cancelled and any or all Proposals may be rejected, in whole or in part, when it is determined to be in the best interest of the purchasing agency (SFA), as provided in §3-122-95 through §3-122-97, HAR.

14. PROPOSAL DEADLINES

Proposals must be received by the posted closing date and time as described in subsection 7 RFP Key Dates of this RFP.

15. DISQUALIFICATION OF PROPOSALS

SFA reserves the right to consider as acceptable only those Proposals submitted in compliance with all the requirements set forth in this RFP and which demonstrate an understanding of the issues involved and the scope of work.

An Offeror shall be disqualified, and the Offeror's Proposal shall be rejected, for any one or more of the following non-exclusive reasons as solely determined by SFA:

a. Proposal received after specified deadline.

b. Proposal not properly completed as required herein or containing any unauthorized additions or deletions, defects including but not limited to irregularities of any kind which may make the Proposal incomplete, indefinite, or ambiguous as to its meaning (e.g., un-initialed erasures).

c. Incomplete Proposals or conditional Proposals, including but not limited to a Proposal which includes any other set of terms and conditions, or any terms or conditions contradictory to those included in this RFP.

d. A Proposal signed by other than an authorized individual.

e. More than one Proposal per license type from an individual, firm, corporation, or joint venture under the same or different names (Offeror), whereby all Proposals from the Offeror shall be rejected.

f. Evidence to SFA's sole satisfaction of collusion among Offerors, lack of responsibility and cooperation with SFA requests during the RFP process or as shown by past work, being in arrears on existing contracts with the State of Hawai'i or defaulting on previous contract(s).

g. Failure to possess proper licenses, facilities, equipment or sufficient experience to provide the proposed solution or to perform the work contemplated.

h. Evidence of any noncompliance with any applicable law or rule.

16. PROPOSAL EVALUATION

In accordance with HAR §3-122-45.01, an Evaluation Committee (EC) shall provide a comprehensive, fair, and impartial evaluation of the Proposals in accordance with the requirements of this RFP and the evaluation criteria. Refer to *section 00 21 16* of this RFP for specific requirements and details of the process.

For evaluation purposes, pursuant to §103D-1008, HRS, a tax-exempt proposal submitted in response to a solicitation shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

17. OFFER ACCEPTANCE PERIOD

SFA's acceptance of a Proposal, if any, will typically be made within ninety (90) calendar days after the opening of Proposals.

18. NOTIFICATION OF AWARD

Notice of Intent to Award shall be made to the responsive, responsible Proposal(s) determined by the EC to be the most advantageous to the State based on the evaluation criteria – i.e., those scoring 60% or better during evaluation. Upon completion of the Selection process, SFA shall post the Notice of Intent to Award on HIePRO.

19. DEBRIEFING

The purpose of a debriefing, if requested, is to inform unsuccessful Offerors of the basis for Selection. The Offeror(s) not selected may submit a written request for a debriefing within three (3) working days after the posting of the Selection. The debriefing shall be held, to the maximum extent possible, within seven (7) working days after the posting.

20. PROTEST

Pursuant to HRS §103D-701 and HAR §3-126, any Protest shall be submitted in writing to SFA's Chief Procurement Officer, c/o School Facilities Authority at 2759 South King Street, Room H201, Honolulu, HI 96826.

A Protest of the solicitation content shall be submitted in writing within five (5) working days after the aggrieved person(s) know(s) or should have known about the facts giving rise thereto; provided further that the Protest shall not be considered unless it is submitted in writing prior to the opening date of the Proposals.

A Protest of Selection shall be submitted in writing within five (5) working days after the posting of the Selection or within five (5) working days following a debriefing. The Notice(s) of Selection resulting from this solicitation shall be posted on HIePRO

21. CONTRACT

The selected Offeror(s) (Contractor(s)) shall be required to enter into a formal written Contract. Upon Contract execution, SFA will issue a fully executed copy of the Contract to the Contractor. The Contractor shall then be eligible to receive project requests from SFA Project Coordinator (PC) for individual projects subject to the request protocol as set forth in section 00 72 00. The invitation to submit a proposal will depend on the needs of SFA and availability of funds. No work shall be undertaken by the successful Offeror (Contractor) prior to the commencement date specified on the Order. SFA is not liable for any work, contract costs, expenses, lost profits, or any damages whatsoever incurred by the Contractor prior to an official Order.

22. Contract Award

Award, if any, shall be made to the responsive and responsible Offeror(s) with the highest number of points and whose Proposal(s) SFA deems most advantageous in accordance with the evaluation criteria – i.e., 60% or better during evaluation.

Failure to execute a Contract as required within ten (10) working days after the Awardee has received the Contract, or such further time as SFA may allow for execution, shall be just cause for the annulment of the Award.

23. Conditions for Award

SFA may, in compliance with the Hawai'i Public Procurement Code, reject any or all offers and waive any defects if SFA believes the rejection or waiver is in the best interest of the State.

The Award of an Order for a project is conditioned upon funds made available for the project, if applicable. Any contract is subject to approval by the Attorney General and the approval of the Governor, as required by statute, regulation, rule, order, or other directive.

24. Proposal as Part of the Contract; Order of Precedence of Contract Documents

The Contract Documents, together constituting the entire agreement between the parties, are listed below in the order of precedence with item "a" representing the highest precedence for resolution of any conflicts:

a. An individual Order and related documentation including, but not limited to the Detailed Scope of Work, Drawings, Specifications, Project Proposal, and Supplemental Work Orders.

b. The Contract Master Agreement together with any amendments.

c. Section 00 73 73 Statutory Requirements.

d. Supplementary Conditions in Sections 00 73 16, 00 73 43, 00 73 49, and 00 73 63.

e. Section 00 72 00 General Conditions.

Any agreement arising out of this Proposal may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulations, rule, order, or other directive.

25. Terms of Contract

Upon execution of the Contract resulting from this RFP, the Contractor shall be eligible to receive invitations from SFA to attend project scope meetings and submit a competitive proposal for the scoped General Contractor A or B work.

Initial Contract Term:

The initial term of the Contract shall be upon execution of the Contract until June 30, 2030.

Contract Renewal:

The Contract may be extended for not more than three (3) additional twelve-month periods, i) upon mutual written agreement of the parties, ii) prior to expiration, and iii) under the same terms and conditions of the original Contract or as negotiated between SFA and the Contractor. Extension(s) shall be contingent upon i) the need for continued services and ii) funding availability beyond the current fiscal year. As each option(s) to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the Contract for each additional period.

26. Additional Terms and Conditions

SFA reserves the right to add terms and conditions during Contract negotiations, if any. These terms and conditions will be within the scope of the RFP and will not affect the Proposal evaluations.

27. Contract Modifications

The Contract may be modified only by written document signed by the Contract Administrator and Contractor personnel authorized to sign contracts on behalf of the Contractor. Any modification to the Contract shall be pursuant to HAR Chapter 3-125.

28. Failure to Execute Contract; Timely Submission of Certificates

Documentation of Compliance (*see section 00 45 46)* or a *Certificate of Vendor Compliance* (*see section 00 45 46)* and any other required documentation and certification shall be submitted to SFA as soon as possible or by the deadline established by SFA.

29. Contract Invalidation

If any provision in the Contract is found to be invalid, such invalidation will not be construed to invalidate the entire Contract.

END OF SECTION

SECTION 00 21 16

INSTRUCTIONS TO OFFERORS

1. SECTION OVERVIEW

This section provides the criteria on which the RFP evaluation is determined. It is not an attempt to limit the content of the Proposals in any way.

The Offeror may include any additional data or information that is deemed pertinent to this RFP. The Proposal should be prepared simply and economically, providing a straightforward and concise delineation of the Offeror's ability to satisfy the requirements of this RFP. *Refer to section 00 11 19, subsection 9.b regarding Economy of Presentation.*

When an Offeror submits a Proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and for accomplishing any supplemental tasks the Offeror has identified as required to successfully produce the deliverables. The Offeror's plan shall demonstrate an understanding of and the ability to meet and perform all contractual requirements listed in this RFP, including all contractual services.

All Proposals shall remain confidential until a Notice of Award is issued to the selected Offeror(s). Thereafter, all Proposals shall be made available to the public except for those sections which the Offeror considers, and the SFA agrees, to be trade secrets or proprietary material. *See section 00 11 19, subsection 10 Confidentiality of Material.*

1. Packaging the Proposal

The State has established the Hawai'i State eProcurement (HIePRO) System to promote an open and transparent system for vendors to compete for state contracts electronically. Offerors interested in responding to this solicitation must be registered on HIePRO. Registration information is available at the State Procurement Office (SPO) website: https://hiepro.ehawaii.gov/welcome.html, select HIePRO Vendor Registration and then Vendor Registration Guide.

The State will use HIePRO to issue the RFP, receive Offers, and issue Addenda to the RFP. Addenda and the other information and materials shall be provided by the State through HIePRO, including additions or changes with respect to the dates in *section 00 11 19 subsection 7 RFP Key Dates*. The State shall not be responsible for any person's or entity's failure to do so for any reason. The State is not responsible for any delay or failure of any Offeror to receive any materials updated through the RFP Process on a timely basis.

As part of this procurement process, Offerors are informed that awards made for this solicitation, if any, shall be done through the HIePRO and shall, therefore, be subject to a mandatory .75% (.0075) transaction fee, not to exceed $5,000 for the total contract term.

HIePRO Special Instructions. Offeror shall review all special instructions located in HIePRO. Offerors are responsible for ensuring that all necessary files are attached to their offer prior to the proposal deadline.

Offerors are advised that they should not wait until the last minute to submit their proposal on HIePRO. Offerors should allow ample time to review their submitted proposal, including attachments, prior to the proposal deadline.

Proposals shall be submitted and received electronically through HIePRO by the date and time listed in *section 00 11 19 subsection 7 RFP Key Dates*. This electronically submitted offer shall be considered the original. Any offers received outside of the HIePRO, including faxed or e-mailed bids, shall not be accepted, or considered for award. Any offer received after the due date and time shall be rejected. **The maximum file size that HIePRO can accept is 100MB. Files larger than 100MB must be reduced into two or more files.**

Submission of a proposal shall constitute an incontrovertible representation by the Offeror that the Offeror agrees to comply with every requirement of this RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey a reasonable understanding of all terms and conditions of performance of the work.

HIePRO is administered by Hawai'i Information Consortium, LLC dba NIC Hawai'i. NIC Hawai'i shall invoice the Contractor(s) directly for payment of transaction fees. Payment must be made to NIC Hawai'i within thirty (30) days from receipt of invoice. HIC is an intended third-party beneficiary of transaction fees, which are used to fund the operation, maintenance, and future enhancements of the HIePRO system.

Please include the following in the Proposal:

1. Indicate the name, address, telephone number, email and/or fax of the Offeror;

2. Indicate the Proposal due date and time;

3. Indicate the RFP Name and RFP Number;

4. Be clearly marked as follows: RFP No. SFA-PCC27-01 – Contractor NAME _A and/or B; and

5. If Contractor holds a single license, Contractor will indicate **ONLY** the license being utilized in the proposal. If the Contractor is submitting BOTH A and B proposals, Contractor will need to indicate such.

2. Proposal Organization

Services proposed shall be adequately explained and shall contain all sections described below. The Proposal shall include the components explained in the Proposal Content in *subsection 2 Qualifying Requirements and 3 Technical Proposal,* of this RFP and shall use the same section titles for identification purposes.

The Proposal shall be organized as follows:

QUALIFYING REQUIREMENTS

Compliance Documents	
Offeror Form (OF-1)	**Proposal Form 1**
Offeror Certification	**Proposal Form 2**
List of Any Lawsuits or Pending Legal Action	**Proposal Form 3**
Financial Solvency Certification	**Proposal Form 4**
Insurance Requirements	

TECHNICAL PROPOSAL

Offeror's Information	**Proposal Form 5**
Comparable Construction Experience	**Proposal Form 6 (a-d)**
Work Capabilities	**Proposal Form 7**

2. QUALIFIYING REQUIREMENTS (Pass/No Pass)

3. Required Documents

The EC will determine if the Offeror possesses the required documentation and certifications to be considered for this RFP. No points shall be assigned for these requirements. The qualifying specifications will be evaluated on a pass/no pass basis.

The purpose of this step is to determine whether a Proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each Proposal will be reviewed for responsiveness. Failure to meet minimum mandatory requirements ("no pass") will be grounds for deeming a Proposal non-responsive to the RFP and for disqualifying the Proposal. Only those Proposals meeting the mandatory qualifying requirements ("pass") will be considered for further review and evaluation.

4. Offeror Form (OF-1), Proposal Form 1

Proposals shall be submitted using the Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable. Offeror shall indicate its exact legal name in the appropriate spaces on the **Offeror Form (OF-1)**. Failure to do so may delay proper execution of the Contract.

5. Offeror Certification, Proposal Form 2

Offeror shall complete this form and certify that it is signed by an individual authorized to legally bind the Offeror to the Proposal. **Proposal Form 2** includes:

a. The RFP name and number; Offeror's point of contact.

b. A statement indicating that the Offeror, and its subcontractors, if any, are corporations or other legal entities, and have complied with all appropriate registration requirements, if any, of the Business Registration Division.

c. A statement that the Offeror and its subcontractors, if any, are or will be registered to do business in Hawai'i and shall obtain State General Excise Tax Licenses by the start of the work.

6. List of Any Lawsuits or Pending Legal Action, Proposal Form 3

For **Proposal Form 3** of the Proposal, Offerors must provide a complete list of any lawsuits or pending legal actions, which affect or may affect the Offeror, which have taken place during the past 24 months. The list should include the status and disposition of the action.

7. Financial Solvency Certification, Proposal Form 4

The Offeror shall submit a completed and executed **Proposal Form 4** with accompanying letter from the Offeror's surety. Offeror must demonstrate per project bonding capacity of at least $150M to qualify. The signature MUST be the same individual executing the **OF-1**.

8. Permits, Certifications, and Licenses

The Offeror shall possess a valid State of Hawai'i Contractor license A and/or B, which will be kept in force during the life of this Contract. Offeror shall provide the license

number(s) and attach copies of license(s) to substantiate Offeror's compliance with this requirement in the Offeror's proposal. Also please provide for consideration any specialty Contractor license numbers the Contractor may use to perform specialty work in-house.

The Offeror shall follow county permitting requirements and when necessary, obtain and pay for all permits, certificates, and licenses required for the performance of the work specified herein, shall post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of the work specified.

9. Insurance Requirements

To qualify for inclusion in the pool, proposers shall meet the minimum insurance requirements specified in Section 00 73 16, Insurance Requirements, and submit documentation demonstrating compliance with those requirements.

Project-specific insurance requirements for each order will be provided in an updated Section 00 73 16 during the project proposal phase.

3. TECHNICAL PROPOSAL (Total: 460 PTS)

In accordance with Chapter 103D, HRS, Proposals that are determined to be responsive (those that offer all of the basic requirements requested in the RFP and contain all of the required information and forms properly completed) will be further reviewed using the comparative criteria and associated percentages or "weights" outlined in this section.

Each section of the Technical Proposal will be evaluated according to the criteria set forth in that section or the evaluation scale in this section if not otherwise defined and scored by the 0 through 5 rating scale below. Depending on how the section was addressed, that assessed score (0 through 5) will then be multiplied by the total possible value per Tab.

0	1	2	3	4	5
No Response: Proposal did not address criteria	**Unsatisfactory:** Proposal incomplete; missing majority of elements	**Below Satisfactory:** Proposal partially addresses criteria; most areas deficient or weak	**Satisfactory:** Proposal addresses criteria; many areas deficient or weak	**Above Satisfactory:** Good Proposal; criteria clearly evident, but one or two areas deficient	**Excellent:** Strong Proposal; all aspects addressed

All Contractor(s) with an overall evaluation score of 276 or more will be included in the prequalified vendor list, subject to qualifying requirements in subsection 2 and any other requirements within this RFP. There will be no bonus or extra points allotted.

Price is not an evaluation factor, as each project will be subject to competitive pricing as part of the individual project proposal criteria.

1. Offeror's Information, Proposal Form 5

The Offeror shall complete **Proposal Form 5** providing the requested information in a complete and concise manner. Each section will be scored based on the RFP evaluation rubric in subsection 3, and points awarded based on the assigned weights as stated on **Proposal Form 5**. 100 Points possible for this section.

2. Comparable Construction Experience, Proposal Form 6

The Offeror shall complete a **Proposal Form 6** detailing a comparable work project completed by the Offeror. Scoring shall be based on completeness and the comparability to the work being requested in the RFP. **Proposal Form 6** has been provided as "a" through "d" to ensure the offeror provides 4 separate projects. Each shall be scored applying the rubric in subsection 3 with a weight of 5 points multiplied by the scoring factor. 25 points for each project, 100 possible points.

3. Work Capabilities, Proposal Form 7

The Offeror shall submit a completed Proposal Form 7 indicating the types of work the Offeror is capable of and willing to perform. Offerors will be expected to perform the types of work indicated if the need arises and will factor in determining what projects the awardees will be selected to compete on. Misrepresenting capability may adversely affect the performance value of any awarded Contractor. In the event an awardee loses capability after award, they are required to inform the CA with sufficient justification to avoid having their past performance negatively adjusted. 10 points for each capability claimed. 260 possible points.

4. Price Proposal

Price is not an evaluation criterion and there is no provision to submit pricing as part of this Request for Proposals. Price will be determined as part of the proposal evaluation and award process for each project.

4. BEST AND FINAL OFFER

Following the evaluation of responses, the SFA, in its sole discretion, may ask respondents to provide their Best and Final Offer (BAFO). Only respondents to the solicitation whose offer was received prior to the deadline will have the opportunity to submit modified Proposals.

If a BAFO is identical to the initial Proposal, the Offeror need only send a Notification stating this fact and the previous submittal shall be used as the BAFO. This letter shall be in the form of a standard business letter on official business letterhead, shall indicate the Offeror's exact legal name, and shall be signed by an individual authorized to legally bind the Offeror.

If a respondent does not submit a notice of withdrawal or a BAFO with a new Technical Proposal, their immediate previous offer will be construed as their BAFO.

The BAFO, if required, shall be submitted by the date and time specified or as amended by addendum.

The contents and format of the BAFO shall still follow the specifications of *subsection 1 Section Overview, 2 Qualifying Requirements, and 3 Technical Proposal,* however, the Offerors shall highlight the items which vary from the original offer. After BAFOs are received, final evaluations will be conducted for an award of Contract(s).

5. PACKAGING OF BEST AND FINAL OFFER

A Proposal with signatures, signed by the person with the authority to commit the Offeror, submitted on HIePRO, is required. **Emailed proposals will not be accepted.**

6. FINAL EVALUATION OF THE TECHNICAL PROPOSAL

The EC shall review their previous scores and conduct final evaluations and scoring of the Technical Proposal for the Priority-listed Offerors.

7. RECOMMENDATION OF AWARD

The EC shall prepare a report summarizing the findings and rankings of the Priority-listed Offerors and will make the final recommendation for Contract award(s).

The award(s) shall be issued in writing to the responsible Offeror(s) whose Proposal(s) is determined to provide the best value to the SFA, taking into consideration the evaluation criteria in the RFP. The Awards will be posted on the State Procurement Office HIePRO website: https://hiepro.ehawaii.gov/welcome.html.

END OF SECTION

SECTION 00 25 16

PRE-PROPOSAL MEETINGS

1. PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will be held on November 20, 2026, at 10:00 a.m. (HST). The Pre-Proposal Conference will be held virtually via Teams or other virtual platform service. Attendance is voluntary but interested Offerors are encouraged to attend to gain understanding of the breadth and scope of work involved under this RFP. It is the intent of the SFA to address questions concerning this RFP at the Pre-Proposal Conference. Final answers to any questions resulting in revisions to the original terms will be issued in writing as an addendum to this RFP.

Interested Offerors wanting to participate in the Pre-Proposal Conference virtually may participate via phone and/or internet.

A meeting link will be sent to all Offerors that have registered on HIePRO.

END OF SECTION

SECTION 00 42 00

PROPOSAL FORMS

1. Required Forms

Offeror shall complete and submit the following Proposal Forms as part of its Proposal. Forms shall be completed in accordance with the instructions contained in this Section and on the applicable Proposal Form.

1. Offeror Form (OF-1), Proposal Form 1

Proposals shall be submitted using the Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable. Offeror shall indicate its exact legal name in the appropriate spaces on the **Offeror Form (OF-1)**. Failure to do so may delay proper execution of the Contract.

2. Offeror Certification, Proposal Form 2

Offeror shall complete this form and certify that it is signed by an individual authorized to legally bind the Offeror to the Proposal. **Proposal Form 2** includes:

a. The RFP name and number; Offeror's point of contact.

b. A statement indicating that the Offeror, and its subcontractors, if any, are corporations or other legal entities, and have complied with all appropriate registration requirements, if any, of the Business Registration Division.

c. A statement that the Offeror and its subcontractors, if any, are or will be registered to do business in Hawai'i and shall obtain State General Excise Tax Licenses by the start of the work.

3. List of Any Lawsuits or Pending Legal Action, Proposal Form 3

For **Proposal Form 3** of the Proposal, Offerors must provide a complete list of any lawsuits or pending legal actions, which affect or may affect the Offeror, which have taken place during the past 24 months. The list should include the status and disposition of the action.

4. Financial Solvency Certification, Proposal Form 4

The Offeror shall submit a completed and executed **Proposal Form 4** with accompanying letter from the Offeror's surety. The signature MUST be the same individual executing the **OF-1**.

5. Offeror's Information, Proposal Form 5

The Offeror shall complete **Proposal Form 5** providing the requested information in a complete and concise manner. Each section will be scored based on the RFP evaluation rubric in subsection 3, and points awarded based on the assigned weights as stated on **Proposal Form 5**.

6. Comparable Construction Experience, Proposal Form 6

The Offeror shall complete a **Proposal Form 6** detailing a comparable work project completed by the Offeror. Scoring shall be based on completeness and the comparability to the work being requested in the RFP. **Proposal Form 6** has been provided as “a” through “d” to ensure the offeror provides 4 separate projects.

7. Work Capabilities, Proposal Form 7

The Offeror shall submit a completed Proposal Form 7 indicating the types of work the Offeror is capable of and willing to perform. Offerors will be expected to perform the types of work indicated if the need arises and will factor in determining what projects the awardees will be selected to compete on. Misrepresenting capability may adversely affect the performance value of any awarded Contractor. In the event an awardee loses capability after award, they are required to inform the CA with sufficient justification to avoid having their past performance negatively adjusted.

ATTACHMENT 1
PROPOSAL FORM 1

PROPOSAL FORM 1

RFP No. SFA-PCC27-01, FORM OF-1
STATE OF HAWAI'I, SFA

To Whom It May Concern:

The undersigned has carefully read and understands the terms and conditions specified in the RFP and in its attachments and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, HRS, concerning prohibited State contracts.

The undersigned represents: **(Check √ one only)**

☐ A **Hawai'i business** incorporated or organized under the laws of the State of Hawai'i; **OR**

☐ A **Compliant Non-Hawai'i business** not incorporated or organized under the laws of the State of Hawai'i, but registered at the State of Hawai'i Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawai'i.

State of incorporation: _____

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ Other _____

Federal I.D. No.: _____ Hawai'i General Excise Tax License I.D. No.: _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business Address (street address): _____

City, State, Zip Code: _____

Date: _____ Respectfully submitted:

Telephone No.: _____ _____
Authorized (Original) Signature

Fax No.: _____ Name and Title (Type or Print)

E-mail Address: _____ * _____
Exact Legal Name of Company (Offeror)

*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

_____

_____

ATTACHMENT 2
PROPOSAL FORM 2

PROPOSAL FORM 2 (PLEASE TYPE YOUR RESPONSE)

OFFEROR CERTIFICATION

Please complete the form and sign at the bottom of the page.

1. Offeror's (Contractor's) Name:_____

2. RFP No. SFA-PCC27-01 Prequalified Contractors to Provide General Contractor A and/or B Services Statewide

3. The Offeror, and its subcontractors, if any, are corporations or other legal entities, and have complied with all appropriate registration requirements, if any, of the Business Registration Division.

4. The Offeror and its subcontractors, if any, are or will be registered to do business in Hawai'i and shall obtain State General Excise Tax Licenses by the start of the work.

   FOR PROJECTS AWARDED UNDER THIS CONTRACT:

5. The Offeror's Proposal and the prices listed in the Proposal are firm and shall remain so throughout the Contract period.

6. The Offeror certifies that the prices and cost data were arrived at independently, without consultation, communication, or agreement with any other Offeror or competitor.

7. The Offeror certifies that unless otherwise required by law, the prices and cost data that were submitted have not been knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor prior to the Award of the Contract.

8. The Offeror certifies that no attempt was made or shall be made by any Offeror to induce any other person or firm to submit or not to submit a price for the purpose of restricting competition.

9. The Offeror certifies that the price shall remain in effect for ninety (90) calendar days following the date the Proposals are due.

By signing this Certification, I, as a duly authorized representative of the Offeror and possessing the authority to bind the Offeror to the terms of this solicitation, hereby certify the information above is true and correct. Any falsification of the statements contained herein shall be grounds for rejection of the proposal, cancellation of an award, or termination of a contract.

Signature: _____

Print Name: _____

Title: _____

Date: _____

ATTACHMENT 3
PROPOSAL FORM 3

PROPOSAL FORM 3 (PLEASE TYPE YOUR RESPONSE)

LIST OF ANY LAWSUITS OR PENDING LEGAL ACTIONS

Offeror must check ONE of the following:

☐ Offeror had lawsuits or pending legal actions, which affect or may affect the Offeror, which have taken place during the past 24 months. This shall include any lawsuits or pending legal actions involving the SFA.*

☐ Offeror had NO lawsuits or pending legal actions, which affect or may affect the Offeror, which have taken place during the past 24 months. This shall include any lawsuits or pending legal actions involving the SFA.

*If you checked the first box, please provide a list of lawsuits or pending legal actions here. The list shall include the status and disposition of the action. Please use the space provided below.

ATTACHMENT 4
PROPOSAL FORM 4

PROPOSAL FORM 4

FINANCIAL SOLVENCY CERTIFICATION

Please answer numbers 1, 2, and 3 using the space provided, and sign at the bottom of the page.

1. Offeror's (Contractor's) Name: _____

2. Offeror's Point of Contact: _____

   Name Phone Email

3. The Offeror certifies that the company has been in business for ____ years.

4. The Offeror certifies that the company is financially solvent.

5. The Offeror MUST attach a letter from the surety company stating the company's bonding capacity.

6. The Offeror MUST attach a copy of the Hawai'i State Contractor's License **A and/or B.**

7. The Offeror MUST attach copies of Operations and/or Field Manager's resumes.

By signing this Certification, I, as a duly authorized representative of the Offeror and possessing the authority to bind the Offeror to the terms of this solicitation, hereby certify the information above is true and correct. Any falsification of the statements contained herein shall be grounds for rejection of the proposal, cancellation of an award, or termination of a contract.

Signature: _____

Print Name: _____

Title: _____

Date: _____

ATTACHMENT 5
PROPOSAL FORM 5

PROPOSAL FORM 5

OFFEROR'S INFORMATION

Contractor Name:	
DBA:	
Address:	
Remittance Address: (write "SAME" if same as above)	
Business Phone Number:	
Email:	

Contact Name	Title/Position	Cell Phone	Email

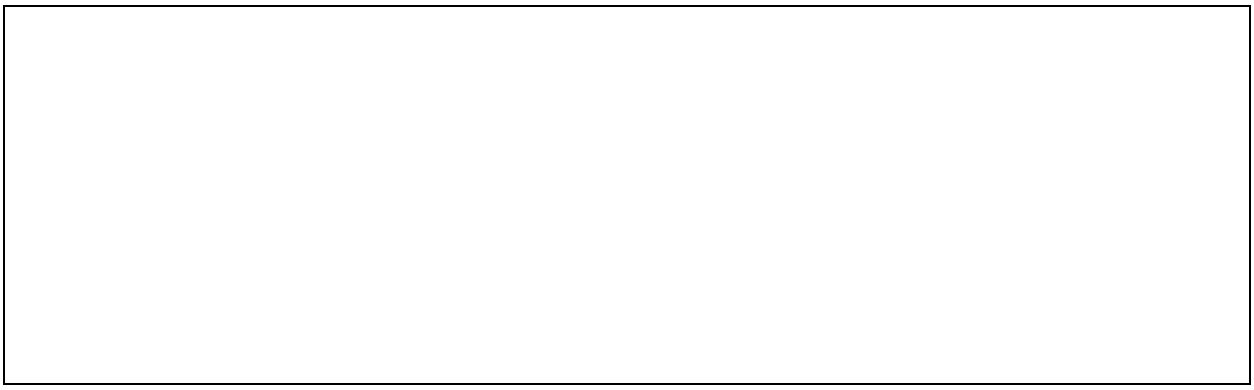
Please check the project types below that you are willing and licensed to perform and for which you will **utilize your own** direct labor.

Type	Place an X
Renovations	
New Construction	

Please check the types of work categories below that you are willing and licensed to perform and for which you will **utilize your own** direct labor.

Type	Place an X
General A	
General B	

For the categories checked above please write down the name, Contractor license type, and Contractor license number, please mention any Specialty Contractor licenses you may have.



Please X the location(s) that the Offeror can accept work:

Place X in box	**Location(s)**		**Place X in box**	**Location(s)**
	Oahu			Hawai'i – East
	Maui			Hawai'i – West
	Molokai			Kauai – East
	Lanai			Kauai - West

For each island checked above do you have workers based on that island or would you need to transport crews from another island? (8 pts. x 0 through 5) 40 max. pts.

Baseyard Capabilities (8 pts. x 0 through 5**)** 40 max. pts.

Please write down the address of each of your company baseyard(s), and the number of workers based out of each yard. Please attach information on a separate sheet of paper if more space is needed.

Work Hours (4 pts. x 0 through 5**)** 20 max. pts.

For each baseyard above please provide your regular work hours and days. Please state if the yard is capable of performing night, weekend or off hour work when necessary.

ATTACHMENT 6
PROPOSAL FORM 6

PROPOSAL FORM 6a (PLEASE TYPE YOUR RESPONSE)

COMPARABLE CONSTRUCTION EXPERIENCE

(5 pts. x 0 through 5)

1	Contractor's Name		
2	Client Name		
3	Project Name		
4	Project Number		
5	Was Final Acceptance Achieved or Anticipated after January 1, 2017? (put an X in applicable box)	Yes	
		No	
6	Initial Project Value $		
7	Estimated % of Self Performed Work		
8	Estimated % of Subcontract Work		
9	Subcontractor Licenses (if any)		
10	Dollar Amount of Increases (if greater than 10% increase over the Initial Project Value, attach an additional sheet describing the circumstances of the changes)		
11	Client was one of the following (place X in applicable box)	City/County	
		State of Hawai'i	
		Federal	
		Commercial	
12	Project Location (City, State)		

13	Project Scope:	
14	Description of any problems or major issues encountered during the project (if any) and what was done to resolve it.	

PROPOSAL FORM 6b (PLEASE TYPE YOUR RESPONSE)

COMPARABLE CONSTRUCTION EXPERIENCE

(5 pts. x 0 through 5)

1	Contractor's Name		
2	Client Name		
3	Project Name		
4	Project Number		
5	Was Final Acceptance Achieved or Anticipated after January 1, 2017? (put an X in applicable box)	Yes	
		No	
6	Initial Project Value $		
7	Estimated % of Self Performed Work		
8	Estimated % of Subcontract Work		
9	Subcontractor Licenses (if any)		
10	Dollar Amount of Increases (if greater than 10% increase over the Initial Project Value, attach an additional sheet describing the circumstances of the changes)		
11	Client was one of the following (place X in applicable box)	City/County	
		State of Hawai'i	
		Federal	
		Commercial	
12	Project Location (City, State)		

13	Project Scope:	
14	Description of any problems or major issues encountered during the project (if any) and what was done to resolve it.	

PROPOSAL FORM 6c (PLEASE TYPE YOUR RESPONSE)

COMPARABLE CONSTRUCTION EXPERIENCE

(5 pts. x 0 through 5)

1	Contractor's Name		
2	Client Name		
3	Project Name		
4	Project Number		
5	Was Final Acceptance Achieved or Anticipated after January 1, 2017? (put an X in applicable box)	Yes	
		No	
6	Initial Project Value $		
7	Estimated % of Self Performed Work		
8	Estimated % of Subcontract Work		
9	Subcontractor Licenses (if any)		
10	Dollar Amount of Increases (if greater than 10% increase over the Initial Project Value, attach an additional sheet describing the circumstances of the changes)		
11	Client was one of the following (place X in applicable box)	City/County	
		State of Hawai'i	
		Federal	
		Commercial	
12	Project Location (City, State)		

13	Project Scope:	
14	Description of any problems or major issues encountered during the project (if any) and what was done to resolve it.	

PROPOSAL FORM 6d (PLEASE TYPE YOUR RESPONSE)

COMPARABLE CONSTRUCTION EXPERIENCE

(5 pts. x 0 through 5)

v1	Contractor's Name		
2	Client Name		
3	Project Name		
4	Project Number		
5	Was Final Acceptance Achieved or Anticipated after January 1, 2017? (put an X in applicable box)	Yes	
		No	
6	Initial Project Value $		
7	Estimated % of Self Performed Work		
8	Estimated % of Subcontract Work		
9	Subcontractor Licenses (if any)		
10	Dollar Amount of Increases (if greater than 10% increase over the Initial Project Value, attach an additional sheet describing the circumstances of the changes)		
11	Client was one of the following (place X in applicable box)	City/County	
		State of Hawai'i	
		Federal	
		Commercial	
12	Project Location (City, State)		

13	Project Scope:	
14	Description of any problems or major issues encountered during the project (if any) and what was done to resolve it.	

ATTACHMENT 7
PROPOSAL FORM 7

PROPOSAL FORM 7

WORK CAPABILITIES

Instructions and scoring

For purposes of Proposal Form 7, "your company" means the Offeror together with subcontractors and suppliers that the Offeror currently uses, has access to, or reasonably expects to use and that, as of the Proposal due date, hold the licenses, certifications, and registrations required for the applicable work.

Mark YES only when your company is willing and presently capable of performing or managing the complete capability described using the Offeror's existing personnel, systems, financial resources, equipment, and established subcontractor or supplier relationships.

A YES response does not mean that the Offeror must self-perform the work. The Offeror remains responsible for managing, coordinating, and completing all work represented by the response.

Geographic availability is identified separately on Proposal Form 5. A YES response indicates capability in at least one Service Region selected on Proposal Form 5 and does not represent statewide availability unless the Offeror selected all applicable Service Regions.

Each YES response is worth 10 points. A NO, blank response, or response marking both YES and NO receives zero points. Maximum score: 260 points. A NO response does not independently disqualify an Offeror from the prequalified contractor pool.

SFA may request evidence supporting any YES response, including project records, owner references, licenses, certifications, personnel qualifications, financial or bonding information, subcontractor or supplier information, equipment, and relevant experience. An unsupported or materially inaccurate YES response may receive zero points and may be considered in determining the Offeror's responsibility.

Evaluation of Work Capabilities [place an X in Yes or No] (10 pts. for each “Yes”)

No.	Item	YES	NO
1	Has your company successfully completed, as the prime contractor, design-builder, or managing joint-venture member, at least one construction project with a final construction value of $150 million or more?		
2	Has your company successfully completed at least one new K-12 school, higher-education facility, or comparably complex institutional facility with a construction value of $75 million or more?		
3	Can your company demonstrate the organizational and financial capacity to manage a construction contract exceeding $150 million from notice to proceed through final acceptance?		

No.	Item	YES	NO
4	Can your company manage two or more construction projects exceeding $100 million concurrently without impairing staffing, bonding, cash flow, supervision, or project performance?		
5	Can your company provide an experienced project executive, project manager, superintendent, scheduler, cost manager, safety manager, and quality-control manager for a project exceeding $150 million?		
6	Can your company provide comprehensive preconstruction services, including constructability reviews, cost estimating, value analysis, design coordination, procurement planning, scheduling, and bid-package development?		
7	Can your company prepare and reconcile detailed construction estimates at the conceptual, schematic-design, design-development, and construction-document stages?		
8	Can your company perform constructability reviews that identify design conflicts, incomplete information, sequencing constraints, site risks, and opportunities to reduce cost or schedule impacts?		
9	Can your company manage design-assist or delegated-design subcontractors and coordinate their work with the architect, engineers, specialty consultants, and other project participants?		
10	Can your company use Building Information Modeling and virtual design and construction tools for multidisciplinary coordination, clash detection, installation planning, model-based review, and record-document development?		
11	Can your company develop, maintain, and update a resource-loaded critical-path schedule covering design, permitting, procurement, construction, testing, commissioning, occupancy, and closeout?		
12	Can your company develop and implement a schedule-recovery plan when actual or projected progress falls behind the approved project schedule?		
13	Can your company maintain a comprehensive cost-control system that tracks commitments, expenditures, pending changes, contingency, allowances, cash flow, and forecasted cost at completion?		
14	Can your company identify, document, price, negotiate, and resolve changes while maintaining current cost and schedule forecasts and preventing accumulation of unresolved change-order exposure?		

No.	Item	YES	NO
15	Can your company maintain an integrated project-management information system for submittals, requests for information, correspondence, meeting records, daily reports, photographs, changes, inspections, deficiencies, and closeout documents?		
16	Can your company prequalify, procure, coordinate, and manage the major subcontractors and suppliers required to deliver a complete school project exceeding $150 million?		
17	Can your company maintain and implement contingency plans for subcontractor default, labor shortages, material shortages, long-lead equipment delays, shipping disruptions, and other supply-chain risks?		
18	Can your company manage procurement, ocean freight, interisland transportation, storage, equipment mobilization, and long-lead material delivery for projects located on Oahu or the neighbor islands?		
19	Can your company develop and implement a site-logistics and phasing plan for construction adjacent to an occupied school or other continuously operating public facility?		
20	Can your company implement and enforce a project-specific safety program appropriate for a large, complex construction site, including separation of construction activities from students, staff, visitors, and the public?		
21	Can your company implement a documented quality-control program covering submittals, mock-ups, preparatory meetings, inspections, testing, nonconforming work, corrective actions, and verification before work is concealed?		
22	Can your company coordinate the installation, testing, integration, and commissioning of complex mechanical, electrical, plumbing, fire-life-safety, controls, communications, security, and other institutional building systems?		
23	Can your company manage environmental and site-compliance requirements, including hazardous materials, contaminated soil, stormwater, erosion control, archaeological or cultural discoveries, and required regulatory reporting?		
24	Can your company coordinate building permits, utility services, regulatory approvals, agency reviews, school operations, community concerns, and other third-party requirements necessary to complete the project?		
25	Can your company complete project turnover and closeout requirements, including commissioning support, occupancy approvals, staff training, punch-		

No.	Item	YES	NO
	list work, as-built records, operation and maintenance information, asset data, warranties, and post-occupancy corrections?		
26	Can your company perform or manage construction projects on active military installations, including base-access requirements, personnel badging and screening, security procedures, force-protection requirements, restricted work areas, and coordination with military operations?		

END OF SECTION

SECTION 00 43 93

PROPOSAL SUBMITTAL CHECKLIST

1. CHECKLIST

Offerors shall use this checklist provided to ensure all necessary documents and proposal forms are compiled as part of their Proposal. The SFA reserves the right to consider as acceptable only those Proposals submitted in compliance with all the requirements set forth in this RFP. *See* section 00 11 19 subsection 15.

☐ Compliance Documents (*See* section 00 45 46.)

☐ Proposal Forms 1 through 7 (*See* section 00 21 16 subsection 2 & section 00 42 00.)

☐ Photocopies of Licenses: A and/or B, (*See* Proposal Form 4)

☐ Operations and/or Field Manager(s) Resume(s) (See Proposal Form 4)

☐ Insurance Requirements (*See* section 00 73 16.)

SECTION 00 45 46

GOVERNMENTAL CERTIFICATIONS

1. Compliance Documents

The work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Vendors are advised that they are liable for the Hawai'i GET at the current prevailing tax rate for sales made on Oahu, and for the islands of Hawai'i, Maui, Kauai, Molokai, and Lanai. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

The Offeror must provide one of the following, as proof of compliance:

a. Certificate of Vendor Compliance (Hawai'i Compliance Express)

Upon Proposal submission, Offeror may demonstrate proof of compliance with the above-referenced requirements by submitting a *Certificate of Vendor Compliance,* issued by the Hawai'i Compliance Express (HCE) online system. The HCE service allows vendors to register online through a simple wizard interface at http://vendors.ehawaii.gov. The *Certificate of Vendor Compliance* provides current compliance status as of the issuance date, satisfies requirements of Section 103D-310(c), HRS, and is therefore acceptable for contracting purposes. Contractors electing to use HCE services are required to pay an annual fee.

Due to the time required to obtain the required HCE *Certificate of Vendor Compliance*, it is highly recommended that the interested Offeror begin the registration process immediately.

OR

b. Other Documentation of Compliance

As part of the Qualifying Proposal Requirements, the Offeror shall furnish proof of compliance according to HRS §103D-310 and HAR §3-122-112, including documentation from:

1) Department of Taxation

- Chapter 237, tax clearance;

2) Department of Labor

- Chapter 383, unemployment insurance;
- Chapter 386, workers' compensation;
- Chapter 392, temporary disability insurance;
- Chapter 393, prepaid health care; and

3) Department of Commerce and Consumer Affairs

A *Certificate of Good Standing* verifies the Offeror's status as (a) a Hawai'i business, registered and incorporated or organized under the laws of the State of Hawai'i, or (b) a compliant non-Hawai'i business registered to do business in Hawai'i. As evidence of compliance, the Offeror may submit the *Certificate of Good Standing* issued by the Department of Commerce and Consumer Affairs, Business Registration Division (BREG) to fulfill this requirement. A Hawai'i business that is a sole proprietorship is not required to register with BREG and therefore exempt from this requirement.

END OF SECTION

SECTION 00 72 00

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

5. *Bidder*—An individual or entity that submits a Bid to Owner.

6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the

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Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. *Claim*

    a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

    b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.

    c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.

    d. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.

14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.

17. *Cost of the Work*—See Paragraph 13.01 for definition.

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18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.

23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

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27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.

29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.

32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.

34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.

36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

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39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.

44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

46. *Technical Data*

    a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.

    b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data

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contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

51. Contract Administrator—The person identified in the Agreement or a written notice from the State who has delegated authority to enter into and administer the Contract and make written determinations. Only the Contract Administrator, or another official acting within express written delegated authority, may bind the State regarding scope, Contract Price, Contract Times, waiver, acceptance of defective Work, claims, suspension, breach, default, or termination.

52. Project Coordinator—The individual or entity named as such by the Contract Administrator. The Project Coordinator may act in the role of the engineer as described throughout these general conditions. Project Coordinator may interpret technical requirements, review Submittals, observe and evaluate Work, recommend payment and completion, and make technical recommendations. Project Coordinator has no independent authority to modify the Contract, authorize additional compensation or time, waive requirements, settle a Claim, suspend the Work, declare default, terminate the Contract, or finally accept the Work.

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1.02 *Terminology*

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*: The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

1. does not conform to the Contract Documents;

2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.

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4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. *Contract Price or Contract Times*: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

A. *Performance and Payment Bonds*: When Contractor reviews the contract commitment in the Owner's Project Management Information System~~delivers the signed counterparts of the Agreement to Owner~~, Contractor shall also attach a portable document format (PDF) copy of performance bond and payment bonds ~~deliver to Owner the performance bond and payment bond~~ (if the Contract requires Contractor to furnish such bonds).

B. *Evidence of Contractor's Insurance*: When Contractor reviews the contract commitment in the Owner's Project Management Information System~~delivers the signed counterparts of the Agreement to Owner~~, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

C. *Evidence of Owner's Insurance*: The State of Hawai'i, as a sovereignty, chooses to be self-insured for the liability exposure related to construction projects. As such, the Owner will not be to deliver evidence of insurance to Contractor~~After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6~~.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor no printed copies of the Contract Documents. The official version of Contract Documents shall be maintained in electronic format in the Owner's Project Management Information System.~~Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.~~

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~~B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.~~

2.03 *Before Starting Construction*

A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing,

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scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

~~B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.~~

~~C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.~~

B. Electronic Documents Protocol: The parties shall conform to the following provisions in Paragraphs 2.06.B and 2.06.C, together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.

1. Basic Requirements

a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents in an electronic or digital format using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Contract.

b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.

c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Contract Documents.

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d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between a party and any third party for any portion of the Work on the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with a party or with Engineer. Nothing herein will modify the requirements of the Contract regarding communications between and among the parties and their subcontractors and consultants.

e. When transmitting Electronic Documents, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.

f. Nothing herein negates any obligation 1) in the Contract to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; 2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or 3) to comply with the notice requirements of Paragraph 18.01 of the General Conditions.

2. System Infrastructure for Electronic Document Exchange

a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP, and any explicit system requirements specified by attachment to this EDP, it is the obligation of each party to determine, for itself, its own System Infrastructure.

1) The maximum size of an email attachment for exchange of Electronic Documents under this EDP is 35 MB. Attachments larger than that may be exchanged using large file transfer functions.

2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.

b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.

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c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it shall not be liable to the other party for any breach of system security.

d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties shall cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Contractor, not reasonably anticipated under the original EDP, Contractor may seek an adjustment in price or time under the appropriate process in the Contract.

e. Each party is responsible for its own back-up and archive of documents sent and received during the term of the contract under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the parties may rely for document archiving during the specified term of operation of such Project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of Project documents after the term of the Contract, or after termination of the Project document archive, if one is established, for as long as required by the Contract and as each party deems necessary for its own purposes.

f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.

g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.

h. The Owner will operate a Project Information Management System (PMIS) for use of Owner, Engineer and Contractor during the Project for exchange and storage of Project-related communications and information. Except as otherwise provided in this EDP or the General Conditions, use of the PMIS by the parties as described in this Paragraph will be mandatory for exchange of Project documents, communications, submittals, and other Project-related information. The following conditions and standards will govern use of the PMIS:

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1) The PMIS will be operated and be available for reliance by the parties until the end of Contractor's warranty period;

2) The Owner will provide Contractor access to the PMIS;

3) The Contractor will be responsible for obtaining software licenses for scheduling software required to create project schedules for import into the PMIS; and

4) Contractor will obtain PMIS training at no cost to the Owner.

C. Software Requirements for Electronic Document Exchange; Limitations

1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.

a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.

2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.

3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in Exhibit A to this EDP, including software versions, if listed.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the ~~printed~~ electronic record version will govern.

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D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

A. *Standards Specifications, Codes, Laws and Regulations*

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect

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to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents*: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the

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Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

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4.03 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an

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adjustment in Contract Times under this paragraph include but are not limited to the following:

~~1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;~~

~~2. Abnormal weather conditions;~~

~~3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and~~

~~4. Acts of war or terrorism.~~

1. Acts of God
2. Acts of the public enemy;
3. Acts of the State and any other governmental entity in either a sovereign or contractual capacity;
4. Acts of another contractor in the performance of a contract with the State;
5. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, quarantine restrictions, and earthquakes;
6. Strikes or other labor disputes;
7. Freight embargoes;
8. Unusually severe weather
9. Delays of subcontractors due to causes similar to those set forth above; and
10. Shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the Contract Administrator proof that the contractor has diligently made every effort to obtain the materials from all known sources, and further proof that the inability to obtain the materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations.

D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:

1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or

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interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.

3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.

E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;

2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;

3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;

4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and

5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

H. The contractor, within ten days from the beginning of the delay (unless the Contract Administrator grants a further period of time before the date of final payment under the contract), notifies the Project Coordinator in writing of the causes of delay. The Contract Administrator shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Contract Administrator, the findings of fact justify such an extension.

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ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals

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and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

B. *Removal of Debris During Performance of the Work*: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.

C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and

3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of

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their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

E. All reports of existing physical conditions at or adjacent to the Site, including drawings depicting existing surface or subsurface structures at or adjacent to the Site, except Underground Facilities, that contain Technical Data upon which Contractor may rely will be included in the Bidding Documents. Contractor may rely upon the accuracy of the Technical Data expressly identified in such drawings or elsewhere in the Contract Documents, subject to the limitations stated in the General Conditions.

F. All drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, upon which Contractor may rely shall be included in Bidding Documents.

G. Except for Technical Data expressly identified as information upon which Contractor may rely, Contractor may not rely upon other data, interpretations, opinions, conclusions, or information contained in or derived from the reports and drawings described in Paragraphs 5.03.E and 5.03.F.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
2. is of such a nature as to require a change in the Drawings or Specifications;
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

    b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

    c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

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2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

    a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;

    b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

    c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

G. No claim after final payment. No claim by the Contractor for an adjustment thereunder shall be allowed if asserted after final payment under this contract.

5.05 *Underground Facilities*

A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

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4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.

C. *Engineer's Review*: Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;

3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and

4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

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F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

    b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

    c. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The ~~Supplementary Conditions~~Bidding Documents identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor

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may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such

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condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

A. A. For all Agreements greater than $25,000, Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.

1. *Required Performance Bond Form:* The performance bond that Contractor furnishes will be in the form prescribed in Section 00 61 13.

2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form prescribed in Section 00 61 13.

B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.

C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.

E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

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G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.

H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

A. All requirements relating to insurance, including Contractor's insurance, builder's risk and other property insurance, property losses, waivers of subrogation, and the receipt and application of insurance proceeds, are set forth in Section 00 73 16, Insurance Requirements. Contractor shall comply with all requirements of Section 00 73 16.

~~A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.~~

~~B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.~~

~~D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.~~

~~E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to~~

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copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.

F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and

2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are

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adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

A. *Required Insurance*: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and

5. include all necessary endorsements to support the stated requirements.

C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:

1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;

2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

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3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and

5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.

C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.

D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the

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builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.

1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.

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C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.

D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has

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any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.

C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

1. Regular working hours will be 7:30 A.M. to 4:00 P.M.

2. Owner's legal holidays are holidays observed by the State of Hawai'i.

D. Contractor shall comply with Section 00 73 43, Wage Rate Requirements, including the applicable wage rate schedule attached thereto. Section 00 73 43 is incorporated by reference into these Supplementary Conditions and forms part of the Contract Documents. Contractor shall require compliance by all Subcontractors performing covered Work, including lower-tier Subcontractors.

E. Contractor shall comply with Section 00 73 49, Labor Stabilization Agreement, including the Project Labor Agreement, Agreement-To-Be-Bound, sample Letter of Assent, sample Attestation of Exemption, and other attachments identified in that Section.

F. Contractor shall comply with 00 73 63, Security Requirements, including the certification and other attachments identified in that Section if applicable.

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7.04 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

A. *Contractor's Request; Governing Criteria*: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

    a. in the exercise of reasonable judgment Engineer determines that the proposed item:

        1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

        2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

        3) has a proven record of performance and availability of responsive service; and

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4) is not objectionable to Owner.

b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times; and

2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.

B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

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3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:

    a. will certify that the proposed substitute item will:

        1) perform adequately the functions and achieve the results called for by the general design;

        2) be similar in substance to the item specified; and

        3) be suited to the same use as the item specified.

    b. will state:

        1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

        2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

        3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

    c. will identify:

        1) all variations of the proposed substitute item from the item specified; and

        2) available engineering, sales, maintenance, repair, and replacement services.

    d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a

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substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

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F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.

L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

N. Contractor shall determine the specialty contractor classifications and licenses required to perform each project. Contractor and its Subcontractors shall possess the licenses required for their respective portions of the Work. Subcontractors identified in a project proposal shall be properly licensed on the day of proposal opening. Additional or replacement Subcontractors shall possess the required licenses before performing their assigned Work. Contractor and its Subcontractors shall maintain the required licenses while performing the applicable Work.

O. For each project involving a Subcontractor, Contractor shall submit to Owner a completed Subcontractor's List with the Work Authorization submitted as part of the project proposal. The list shall identify each required specialty contractor classification by classification number and description and provide the complete firm name and license number of each Subcontractor proposed to perform that Work. Contractor shall identify specialty work to be performed in-house and provide Contractor's firm name, license number, and applicable specialty contractor classifications.

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P. For each project alternate, Contractor shall submit a separate Subcontractor's List identifying any additional specialty contractor classifications and Subcontractors required for that alternate. The list shall include the information required by Paragraph 7.07.O. Information previously provided in the base project proposal need not be repeated unless the assigned scope or licensing information differs.

Q. Contractor shall submit an updated Subcontractor's List to Owner whenever the listed firms, assigned scopes, or licensing information change. Submission of an updated list does not replace the acceptance procedures required by Paragraphs 7.07.D and 7.07.E or the monthly reporting required by Paragraph 7.07.H. Nothing in Paragraphs 7.07.N through 7.07.Q prohibits substitutions or replacements otherwise permitted under this Contract.

7.08 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

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7.09 *Permits*

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

D. Contractor shall comply with Section 00 73 73, Statutory Requirements. Section 00 73 73, including the attached AG-008-103D, General Conditions, is incorporated into and forms part of the Contract Documents.

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7.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one ~~printed~~ complete record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Record documents may be maintained in electronic format, provided they are readily accessible at the Site during performance of the Work and available to Owner and Engineer for reference upon request. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. If Contractor maintains record documents electronically, Contractor shall protect the record documents from loss, unauthorized alteration, or deletion, and shall be able to print or export the record documents upon request. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of

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Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

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7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:

a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determine and verify:

1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;

c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

a. Contractor shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

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2. *Samples*

    a. Contractor shall submit the number of Samples required in the Specifications.

    b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.

3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.

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8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

   a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

   b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

   c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

   d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03. 2.04, and 2.05.

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F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:

1. Observations by Engineer;

2. Recommendation by Engineer or payment by Owner of any progress or final payment;

3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. Use or occupancy of the Work or any part thereof by Owner;

5. Any review and approval of a Shop Drawing or Sample submittal;

6. The issuance of a notice of acceptability by Engineer;

7. The end of the correction period established in Paragraph 15.08;

8. Any inspection, test, or approval by others; or

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9. Any correction of defective Work by Owner.

E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

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C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity

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for the introduction and storage of materials and equipment and the execution of such other work.

D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;

2. An itemization of the specific matters to be covered by such authority and responsibility; and

3. The extent of such authority and responsibilities.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be

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entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

   1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.

   2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

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arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures

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of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work,

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Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.

B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

A. Engineer has the authority to reject Work in accordance with Article 14.

B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.

C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.

D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or

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performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

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11.02 *Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

~~A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.~~

~~B. If Owner has issued a Work Change Directive and:~~

~~1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.~~

~~2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.~~

A. Written Work Change Directives

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3. Owner may issue a Work Change Directive ordering or documenting a change in the Work before Owner and Contractor have agreed on any adjustment, if any, in the Contract Price or Contract Times.

4. A Work Change Directive will not change the Contract Price or Contract Times. A Work Change Directive is evidence that the parties expect the change ordered or documented by the Work Change Directive to be incorporated in a subsequently issued Change Order, following agreement by the parties or determination under the Contract Documents regarding the effect, if any, on the Contract Price or Contract Times.

5. Upon receipt of a Work Change Directive, Contractor shall promptly proceed with the Work described in the Work Change Directive, subject to Contractor's safety obligations under the Contract Documents and Laws and Regulations.

6. If Contractor believes that a Work Change Directive justifies an adjustment in the Contract Price or Contract Times, Contractor shall submit a Change Proposal in accordance with Paragraph 11.09. The adjustment, if any, will be determined in accordance with the Contract Documents, including Paragraph 11.07 for adjustments in Contract Price and Paragraph 11.08 for adjustments in Contract Times.

B. Oral Directives

7. Any oral order, direction, instruction, interpretation, or determination from Owner, the Contract Administrator, or Owner's authorized representative that Contractor believes causes a change in the Work, Contract Price, or Contract Times may be considered a change only if Contractor gives Owner written notice of its intent to treat the oral order, direction, instruction, interpretation, or determination as a change directive.

8. Contractor must deliver the written notice before acting in conformity with the oral order, direction, instruction, interpretation, or determination, but in no event more than five days after the oral order, direction, instruction, interpretation, or determination is given to Contractor.

9. The written notice must state the date, circumstances, source of the oral order, direction, instruction, interpretation, or determination, and whether Contractor intends to request an adjustment in the Contract Times.

10. The written notice required by this Paragraph may not be waived and is a condition precedent to Contractor's right to submit a Change Proposal, Claim, or other request for adjustment in the Contract Price or Contract Times arising from the oral order, direction, instruction, interpretation, or determination.

11. Unless Contractor complies with this Paragraph, the oral order, direction, instruction, interpretation, or determination will not be treated as a change, and Contractor waives any claim for an increase in the Contract Price or Contract Times related to such work.

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12. Within 5 days after Owner receives Contractor's written notice, Owner will issue a Change Order or Work Change Directive if Owner agrees that the oral order, direction, instruction, interpretation, or determination constitutes a change. If Owner does not issue a Change Order or Work Change Directive within that time, the request will be deemed rejected.

13. If Contractor objects to Owner's refusal or deemed refusal to issue a Change Order or Work Change Directive, Contractor must submit a written Change Proposal under Paragraph 11.09 within 30 days after Contractor delivered its written notice under this Paragraph. The Change Proposal will be resolved in accordance with Article 11 and Article 12, as applicable.

14. In all cases, Contractor shall proceed with the Work as directed, subject to Contractor's safety obligations under the Contract Documents and Laws and Regulations.

C. Unauthorized Oral Directives

15. Oral statements, comments, observations, interpretations, or instructions from Engineer, inspectors, consultants, school personnel, users, or other third parties will not constitute a change directive unless issued or confirmed by Owner, the Contract Administrator, or Owner's authorized representative in accordance with this Paragraph.

16. Contractor is not entitled to an adjustment in the Contract Price or Contract Times for work performed in response to an unauthorized oral directive, except as may be expressly provided elsewhere in the Contract Documents.

11.04 *Field Orders*

A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.

B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or

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Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).

4. By the costs attributable to the event or situation covered by another Contract clause, with any adjustment to profit or fee determined as specified in that clause or as the parties agree before the relevant Work begins; or

5. By any other method mutually agreed to by Owner and Contractor before the relevant Work begins.

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C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:

1. A mutually acceptable fixed fee; or

~~2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:~~

~~a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;~~

~~b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;~~

~~c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;~~

~~d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;~~

~~e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and~~

~~f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.~~

2. If the parties do not agree on a fixed fee, the fee will be based on the applicable percentages of each portion of the Cost of the Work. When calculating a price adjustment for a change, the combined allowance for overhead, extended overhead due to contract time adjustments, home office overhead, branch office overhead, and profit must not exceed the percentages listed below:

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a. For the contractor, for any work performed by its own forces, twenty per cent (20%) of the cost;

b. For each subcontractor involved, for any work performed by its own forces, twenty per cent (20%) of the cost;

c. For the contractor or any subcontractor, for work performed by their subcontractors, ten per cent (10%) of the amount due the performing subcontractor. Not more than three line item percentages for fee and overhead, not to exceed the maximum percentages shown above, will be allowed regardless of the number of tier subcontractors.

3. The government in determining an adjustment in price may not mandate that the contractor submit its proposal for a price adjustment at a specified percentage that it unilaterally considers to be acceptable.

4. Subparagraphs 2 and 3 above shall not be construed to impair the right of a contractor and government from mutually agreeing to a price adjustment under any method listed in Paragraphs 11.07.B.1, 11.07.B.2, 11.07.B.4, and 11.07.B.5.

D. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraph (1) (A) through (1) (D) shall be issued within 10 days after agreement on the method of adjustment.

11.08 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

E. If the parties do not agree on an adjustment to Contract Times for changed Work, Contractor shall proceed with the changed Work, provided that the Contract Administrator, within 14 days after the changed Work commences, makes such provisional adjustment in Contract Times as the Contract Administrator deems reasonable. Contractor's performance shall not waive any timely claim for additional adjustment.

11.09 *Change Proposals*

A. *Purpose and Content*: Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable

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provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.

   a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

   b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

   c. The contractor shall be required to submit cost or pricing data if any adjustment in contract price exceeding $100,000 subject to the provisions of HAR subchapter 15, chapter 3-122.

   The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

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C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 *Claims*

A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:

1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;

2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;

3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and

4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.

B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

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C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.

D. *Mediation*

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.

2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.

F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

H. State Procurement Remedies and Dispute Procedures

1. Nothing in Article 12 limits, waives, modifies, or supersedes any remedy, procedure, right, obligation, or requirement applicable to this Contract under HAR chapter 3-126, including HAR chapter 3-126, subchapter 3, "Authority to Resolve Contract and Breach of Contract Controversies."

2. The Claims process in this Article 12 is intended to provide a contract-level process for notice, substantiation, review, negotiation, mediation if mutually agreed, and

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documentation of Claims. If a Claim or other controversy arising under or by virtue of the Contract is not resolved by mutual agreement, the matter shall be subject to the dispute resolution procedures required by HAR chapter 3-126.

3. Any action taken under Article 12, including approval, partial approval, denial, deemed denial, negotiation, mediation, or execution of a Change Order or other written document, shall be subject to and construed consistently with HAR chapter 3-126 and other applicable Laws and Regulations.

4. No Claim by Contractor for an adjustment in the Contract Price or Contract Times shall be allowed if written notice of the Claim is not given prior to final payment under the Contract.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

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2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
    a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
        1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
    c. *Construction Equipment Rental*
        1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The

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rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks,

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and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools.

3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

6. Expenses incurred in preparing and advancing Claims.

7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:

a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.

b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:

1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.

2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.

2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable

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access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect

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changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

~~1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:~~

~~a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and~~

~~b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.~~

~~2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.~~

~~3. Adjusted unit prices will apply to all units of that item.~~

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than 15% above or below the estimated quantity stated in the contract.
2. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 150% or below 85% of the estimated quantity.
3. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contract Officer shall, upon receipt of a timely written request for an extension of time, prior to final payment of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the procurement officer the findings justify.
4. Any adjustment in contract price shall be determined in accordance with Paragraph 11.07.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise

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them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

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14.03 *Defective Work*

A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.

B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

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14.05 *Uncovering Work*

A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude

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Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

A. *Basis for Progress Payments*: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

5. For purposes of this Article, Contract Administrator means the officer authorized to administer this Contract on behalf of Owner under applicable procurement law. Engineer's review and recommendation of payment do not transfer to Engineer the duties assigned to the Contract Administrator.

6. An Application for Payment requesting sums retained or withheld from a Subcontractor and due under Paragraph 15.06.F shall separately identify those sums and include the documentation required by Paragraphs 15.06.A.4 and 15.06.A.5. Contractor shall submit the request and supporting documentation simultaneously to Engineer and the Contract Administrator. The affidavit required by Paragraph 15.01.B.3 does not replace these documentation and certification requirements.

7. An electronic submission through Owner's designated PMIS shall satisfy any incorporated requirement for an original invoice. Nothing in this Paragraph postpones a receipt date otherwise established by applicable law.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

   The 10 day review period is included within, and does not extend, the payment period established by Paragraph 15.01.D.1. Engineer shall provide Contract Administrator with a copy of any recommendation or notice returning an Application. A return notice shall identify the specific deficiencies and affected amounts.

   Review of a resubmittal shall not restart the payment period for an amount that was previously properly documented and otherwise eligible for payment. For requests covered by Paragraph 15.01.C.7, its seven-day return deadline controls.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

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b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or

   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

   a. to supervise, direct, or control the Work;

   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

   c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;

   d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or

   e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:

   a. the Work is defective, requiring correction or replacement;

   b. the Contract Price has been reduced by Change Orders;

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c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

7. The Contract Administrator shall return any defective final payment request submitted under Paragraphs 15.06.A.4 or 15.06.A.5 to Contractor within seven days after receipt, with a statement identifying the defect. This requirement applies whether the request is submitted with a progress Application for Payment or Contractor's final Application for Payment. Engineer shall coordinate its review with the Contract Administrator to permit compliance with this deadline. The review period in Paragraph 15.01.C.1 shall not extend this deadline.

D. *Payment Becomes Due*

~~1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.~~

1. Subject to lawful set-offs, withholding, and exceptions under applicable law, Owner shall pay Contractor no later than 30 calendar days after the later of:

a. Owner's receipt of a proper Application for Payment through the recipient designated under Paragraph 15.01.B.7; or

b. Satisfactory delivery of the goods or performance of the Work for which payment is requested.

A proper Application is one that includes the information, certifications, and supporting documentation required for the payment requested. For Contractor's final payment for the entire Work, the applicable requirements of Paragraph 15.06.A shall also be satisfied.

Engineer's recommendation and Owner's administrative approval are steps within the applicable payment period and shall not independently start or restart that period. Delayed acknowledgment, internal routing, or review of an otherwise proper Application shall not extend the payment deadline.

Owner shall identify any lawful basis for withholding and pay the remaining amount in accordance with Paragraph 15.01.E.2. A correction affecting only part of an Application shall not restart the payment period for an unaffected amount that was already properly documented and otherwise eligible for payment.

All payment periods and exceptions shall be administered consistently with HRS 103-10 and HRS 103-10.5.

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2. Any money paid to Contractor shall be disbursed to Subcontractors within ten days after receipt of the money in accordance with the terms of the applicable subcontract; provided that the Subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which Owner has withheld payment.

3. Interest on Owner's overdue payments, including amounts wrongfully withheld under Paragraph 15.01.E.3, shall be determined under HRS 103-10, notwithstanding an inconsistent interest provision in the Agreement. This provision does not limit or replace a penalty or enforcement obligation applicable under HRS 103-10.5 or Paragraph 15.06.G.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:

   a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

   b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

   c. Contractor has failed to provide and maintain required bonds or insurance;

   d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

   e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

   f. The Work is defective, requiring correction or replacement;

   g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

   h. The Contract Price has been reduced by Change Orders;

   i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;

   j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

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k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

l. Other items entitle Owner to a set-off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

4. Nothing in this Article impairs the right of Contractor or a Subcontractor at any tier to negotiate and include in their respective subcontracts additional terms and conditions to be met before the Subcontractor is entitled to receive final payment under Paragraph 15.06.F; provided that any payments withheld pursuant to those additional terms and conditions shall be withheld by the Contract Administrator. Contractor shall separately identify the amount and subcontract basis for any such withholding. Set-offs and withholding under this Article shall be administered consistently with HAR §3-125-23 and HRS §103-10.5.

15.02 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

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C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete,

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Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents;

b. consent of the surety, if any, to final payment;

c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

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d. a list of all duly pending Change Proposals and Claims; and

e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

4. A properly documented final payment request from a Subcontractor seeking payment under Paragraph 15.06.F shall include:

a. Substantiation of the amounts requested.

b. A certification by the Subcontractor, to the best of the Subcontractor's knowledge and belief, that:

1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract.

2) The Subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of HAR §3-125-23.

3) The payment request does not include any amounts that the Subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

c. Documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

5. A payment request made by Contractor to the Contract Administrator that includes a request for sums retained or withheld from a Subcontractor and due to the Subcontractor may not be approved under Paragraph 15.06.F unless the payment request includes:

a. Substantiation of the amounts requested.

b. A certification by Contractor, to the best of Contractor's knowledge and belief, that:

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1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Contract.

2) The Subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the Contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of HAR §3-125-23.

3) The payment request does not include any amounts that Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

6. Contractor's final Application for Payment for the entire Work shall include the tax clearance and vendor compliance documentation required by HRS 103-53, HRS 103D-328, and HAR 3-122-112, to the extent applicable.

a. Contractor shall provide a current Hawai'i Compliance Express Certificate of Vendor Compliance demonstrating the required compliance, or alternative documentation permitted by applicable law and State Procurement Office procedures.

b. When individual certificates are used, Contractor shall provide the required State of Hawai'i and Internal Revenue Service tax clearances and the affirmation of continued compliance required by HAR 3-122-112. Certificates shall satisfy the applicable currency requirements, including the two-month requirement for final-payment tax clearances where that rule applies.

c. Owner shall withhold final payment for the entire Work until the applicable requirements have been satisfied, subject to any legally applicable exemption, waiver, or alternative procedure. Engineer's recommendation does not waive these requirements. Statutory tax assignment and set-off procedures remain applicable.

d. These whole-project final-payment requirements shall be administered subject to Paragraph 15.06.F.3.

B. *Engineer's Review of Final Application and Recommendation of Payment*: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for

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refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

Contractor shall submit its final Application and supporting documentation in accordance with Paragraph 15.01.B.7. Engineer's ten-day review period is included within the payment period established by Paragraph 15.01.D.1. Engineer's subsequent presentation of its recommendation to Owner shall not create an additional payment period.

The Contract Administrator's return of defective final payment requests covered by Paragraph 15.01.C.7 shall be governed by the seven-day deadline stated in that Paragraph. Engineer's review shall not extend that deadline or any payment deadline established by applicable law.

C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.

D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer. Upon receipt of final payment from Owner, Contractor shall make full payment to each Subcontractor, including retainage, within ten days, provided there are no bona fide disputes over the Subcontractor's performance under its subcontract.

F. Payment of Subcontractor Retained or Withheld Sums

1. Where a Subcontractor has provided Contractor with evidence of satisfactory completion of all work under its subcontract and a properly documented final payment request meeting Paragraph 15.06.A.4, the payment requirements of Paragraph 15.06.F.2 apply if either of the following conditions is satisfied:

    a. The Subcontractor has provided Contractor with an acceptable performance and payment bond for the project, executed by a surety company authorized to do business in the State of Hawai'i, as provided in HRS §103-32.1; or

    b. Both of the following have occurred:

        1) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has

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elapsed without written notice of a claim given to Contractor and the surety, as provided in HRS §103D-324.

2) The Subcontractor has provided Contractor with an acceptable release of retainage bond, executed by a surety company authorized to do business in the State of Hawai'i, in an amount of not more than two times the amount being retained or withheld by Contractor; any other bond acceptable to Contractor; or any other form of mutually acceptable collateral.

2. Upon satisfaction of Paragraph 15.06.F.1 and the documentation requirements of Paragraph 15.06.A.5, Owner, acting through Contract Administrator, shall pay Contractor the retained or withheld sums otherwise due for satisfactory subcontract performance within the applicable period under HRS 103-10, administered through Paragraphs 15.01.B.7 and 15.01.D.1. Contractor shall pay those sums to the Subcontractor within ten days after receipt.

3. Contractor may submit a request under this Paragraph separately or as an identified portion of a progress or final Application for Payment. Such a request is not contingent on Contractor's eligibility for final payment for the entire Work.

   Whole-project completion, acceptance, closeout documents, and the collection of certificates from Contractor and all Subcontractors solely for whole-project final payment shall not be conditions precedent to payment otherwise required under this Paragraph.

   This distinction applies notwithstanding any incorporated provision captioned Payment Procedures; Final Payment; Tax Clearance, or any similar provision. References in those provisions to final payment on the Contract mean final payment to Contractor for the entire Work, unless expressly stated otherwise.

   Documentation and subcontract conditions applicable to the requesting Subcontractor remain subject to Paragraphs 15.06.A.4, 15.06.A.5, 15.06.F.1, and 15.01.E.4. Nothing in this Paragraph excuses a tax requirement, assignment, set-off, or withholding independently applicable by law to the particular payment.

4. Payment under this Paragraph does not constitute final payment to Contractor for the entire Work, acceptance of incomplete or defective Work, or release of Contractor's remaining obligations under the Contract Documents.

G. Prompt Payment Enforcement

1. When the conditions for payment under Paragraph 15.06.F have been satisfied, the Contract Administrator or Contractor, as applicable, shall be subject to a penalty of one and one-half percent per month upon outstanding amounts due that were not timely paid by the responsible party.

2. If Contractor was the responsible party, the penalty may be withheld from future payments due to Contractor.

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3. If Contractor violates the requirement in Paragraph 15.06.E to make full payment to a Subcontractor, including retainage, within ten days after receipt of final payment three or more times within two years of the first violation, the Contract Administrator shall refer Contractor to the Contractors License Board for action under HRS §444-17(14).

15.07 *Waiver of Claims*

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

C. Neither the making nor the acceptance of final payment extinguishes an unfulfilled subcontractor payment obligation under this Article or an applicable enforcement obligation under Paragraph 15.06.G. Nothing in this Paragraph waives a right or remedy that applicable law prohibits the parties from waiving.

15.08 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such adjacent areas;

2. correct such defective Work;

3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed

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and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

~~A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.~~

A. The Contract Administrator may, by written order, suspend the performance of the Work, either in whole or in part, for such periods as the Contract Administrator deems necessary for any cause, including but not limited to:

1. Weather or soil conditions considered unsuitable for prosecution of the Work;
2. Failure on the part of Contractor to:
    a. Correct conditions unsafe for the general public or workers;
    b. Carry out orders given by the Contract Administrator;
    c. Perform the Work in strict compliance with the Contract Documents; or
    d. Provide adequate supervision at the Site;

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3. A redesign or other design revision that may affect the Work and is deemed necessary by the Contract Administrator;

4. Unacceptable noise or dust arising from construction, even if such noise or dust does not violate any Laws or Regulations; or

5. The convenience of the State.

B. Suspension of some but not all items of Work will be considered a partial suspension. Suspension of all items of Work will be considered a total suspension. The period of suspension will be computed from the date stated in the written order for Work to cease until the date stated in the written order for Work to resume.

C. If Contractor is ordered by the Contract Administrator in writing to suspend all Work under the Contract because of a redesign or other design revision, unacceptable noise or dust, or the convenience of the State, Contractor may be reimbursed for actual costs necessarily incurred for the Project during the period of suspension. No allowance will be made for anticipated profits.

D. If performance of all or part of the Work is suspended for reasons beyond Contractor's control, an adjustment shall be made for any increase in the cost of performance of the Contract, excluding profit, necessarily caused by the suspension, and the Contract shall be modified in writing accordingly.

E. No adjustment shall be made under this Paragraph 16.01 for any suspension:

1. To the extent performance would have been suspended, delayed, or interrupted by any other cause, including the fault or negligence of Contractor;

2. For which an adjustment is provided or excluded under any other provision of the Contract Documents;

3. Due to failure of any surety;

4. Made at the request of Contractor;

5. Required under the Contract Documents; or

6. Ordered because of Contractor's failure to correct unsafe conditions, carry out orders, perform the Work in strict compliance with the Contract Documents, or provide adequate supervision at the Site.

F. Any adjustment in Contract Price or Contract Times made pursuant to this Paragraph 16.01 shall be determined in accordance with the Contract Documents governing changes and claims for adjustment. Claims for compensation shall be filed in writing with the Contract Administrator within 30 days after the date of the written order to resume Work, or the claim will not be considered. The claim shall include substantiating documents covering the entire amount claimed. The Contract Administrator may investigate the claim as deemed necessary and shall determine the extent, if any, to which an adjustment is equitable and permitted under the Contract Documents.

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16.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or

4. Contractor's repeated disregard of the authority of Owner or Engineer.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

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~~F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.~~

~~G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.~~

A. If Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will assure completion within the Contract Times, including any duly authorized extensions thereof, fails to complete the Work within such time, or commits any other substantial breach of the Contract Documents, and further fails within seven days after receipt of written notice from the Contract Administrator to commence and continue correction of such refusal, failure, or breach with diligence and promptness, then the Contract Administrator may, by written notice to Contractor and surety, declare Contractor in breach and terminate Contractor's right to proceed with the Work, or the part of the Work as to which there has been delay or other breach.

B. Upon such termination of Contractor's right to proceed, Owner may take over the Work and perform the same to completion, by contract or otherwise, and may take possession of and utilize in completing the Work such materials, appliances, equipment, and plant as may be on the Site and necessary therefor.

C. Whether or not Contractor's right to proceed is terminated, Contractor and Contractor's surety shall be liable for any damage to Owner resulting from Contractor's refusal or failure to complete the Work within the Contract Times, including any duly authorized extensions thereof.

D. If liquidated damages are provided in the Contract Documents, and if Owner terminates Contractor's right to proceed, the resulting damage will include liquidated damages for the time required for final completion of the Work.

E. If liquidated damages are provided in the Contract Documents, and if Owner does not terminate Contractor's right to proceed, the resulting damage will include liquidated damages until the Work is completed or accepted.

F. Contractor's right to proceed shall not be terminated, and Contractor shall not be charged with resulting damage, to the extent Contractor is entitled to a time extension under Paragraph 4.05 or other applicable provisions of the Contract Documents.

G. The rights and remedies of Owner provided in the Contract Documents are in addition to any other rights and remedies provided by law.

H. Where Contractor has provided a performance bond, the rights and obligations of Owner, Contractor, and surety shall also be subject to the terms of the performance bond, except that nothing in the performance bond shall limit any right or remedy available to Owner under the Contract Documents or applicable law.

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16.03 *Owner May Terminate for Convenience*

~~A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):~~

~~1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;~~

~~2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and~~

~~3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.~~

~~B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.~~

A. The Contract Administrator may, when the interests of the State so require, terminate the Contract, in whole or in part, for the convenience of the State. The Contract Administrator shall give Contractor written notice of the termination, specifying the part of the Contract terminated and the date on which the termination becomes effective.

B. Upon receipt of a notice of termination for convenience, Contractor shall, to the extent specified in the notice:

1. Stop Work on the terminated portion of the Contract on the effective date stated in the notice;

2. Incur no further obligations in connection with the terminated Work;

3. Terminate outstanding orders and subcontracts as they relate to the terminated Work;

4. Settle liabilities and claims arising out of the termination of such orders and subcontracts, subject to the Contract Administrator's approval;

5. Assign to the State, if directed by the Contract Administrator, Contractor's right, title, and interest under terminated orders or subcontracts; and

6. Continue performance of any Work not terminated by the notice of termination and incur obligations necessary to complete such unterminated Work.

C. The Contract Administrator may require Contractor to transfer title and deliver to the State, in the manner and to the extent directed by the Contract Administrator:

1. Any completed Work; and

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2. Any partially completed Work, goods, materials, parts, tools, equipment, plans, drawings, information, and contract rights that Contractor has specifically produced or specially acquired for performance of the terminated portion of the Contract.

D. Contractor shall protect and preserve property in Contractor's possession in which the State has an interest. If the Contract Administrator does not require transfer and delivery of any completed Work, partially completed Work, goods, materials, or other items described in Paragraph 16.03.C, Contractor shall use its best efforts to sell such items in accordance with applicable law and commercial standards. The exercise of the right to terminate for convenience shall not constitute a breach of Contract by Owner or the State.

E. Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience, together with cost or pricing data to the extent required by the Contract Documents and applicable law. If Contractor fails to file a termination claim within one year from the effective date of termination, the Contract Administrator may pay Contractor, if at all, an amount determined in accordance with this Paragraph 16.03.

F. The Contract Administrator and Contractor may agree to a settlement of the termination claim, provided Contractor has filed a termination claim supported by required cost or pricing data, and provided the settlement does not exceed the total Contract Price, plus allowable settlement costs, reduced by:

1. Payments previously made by Owner;

2. Proceeds of any sale of completed Work, partially completed Work, goods, materials, or other items described in Paragraph 16.03.C; and

3. The Contract Price of Work not terminated.

G. If the Contract Administrator and Contractor do not agree to a complete settlement, the Contract Administrator shall pay Contractor the following amounts, without duplication:

1. The cost of Contract Work performed prior to the effective date of termination, less amounts paid or to be paid for completed portions of the Work;

2. A markup of five percent on actual direct costs for the portion of the Work performed prior to termination, provided that such markup shall not include anticipatory profit or consequential damages;

3. Subject to the prior approval of the Contract Administrator, the costs of settling and paying claims arising out of the termination of subcontracts or orders related to the terminated Work, provided such costs are not otherwise included under Paragraph 16.03.G.1; and

4. A markup for Subcontractors of no more than ten percent on direct costs incurred to the date of termination.

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H. If it appears that Contractor would have sustained a loss had the entire Contract been completed, no markup shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rate of loss.

I. The total amount paid to Contractor under this Paragraph 16.03 shall not exceed the total Contract Price, reduced by:

1. Payments previously made by Owner;

2. Proceeds of any sale of completed Work, partially completed Work, goods, materials, or other items described in Paragraph 16.03.C; and

3. The Contract Price of Work not terminated.

J. Costs claimed, agreed to, or established under this Paragraph 16.03 shall be determined in accordance with HAR chapter 3-123, the Contract Documents, and other applicable law.

K. Contractor shall not be paid for anticipatory profit, consequential damages, post-termination overhead costs not otherwise allowable under this Paragraph 16.03, or other economic loss arising out of or resulting from the termination for convenience.

16.04 *Contractor May Stop Work or Terminate*

~~A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.~~

~~B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.~~

A. Contractor shall not stop the Work or terminate the Contract because of a suspension ordered pursuant to Paragraph 16.01. Contractor's sole remedy for any such suspension shall be an adjustment, if any, permitted under Paragraph 16.01 and the Contract Documents governing changes and claims for adjustment.

B. If, through no act or fault of Contractor, Owner fails for 30 days to pay Contractor a sum finally determined to be due under the Contract Documents, Contractor may give

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written notice to Owner and Engineer of Contractor's intent to stop the Work for nonpayment.

C. If Owner does not pay the finally determined amount due within 30 days after receipt of Contractor's written notice, Contractor may stop the Work until payment is made of the finally determined amount due, including any interest required by the Contract Documents or applicable law.

D. Contractor's right to stop Work under this Paragraph 16.04 applies only to nonpayment of sums finally determined to be due. Contractor shall not stop the Work based on disputed amounts, pending Change Proposals, pending Claims, pending Applications for Payment, disputed quantities, disputed entitlement, or amounts not finally determined to be due.

E. Contractor shall take reasonable steps to protect and preserve the Work during any stoppage permitted under this Paragraph 16.04. Contractor shall resume the Work promptly after payment of the finally determined amount due.

F. Nothing in this Paragraph 16.04 shall limit Contractor's right to pursue a Claim under the Contract Documents for an adjustment in Contract Price or Contract Times, to the extent permitted by the Contract Documents and applicable law.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

A. *Disputes Subject to Final Resolution*: The following disputed matters are subject to final resolution under the provisions of this article:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and

~~2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.~~

2. Breach-of-contract controversies between Owner and Contractor, or disputes concerning obligations that expressly survive final payment, that arise after final payment has been made; provided, however, that no Claim by Contractor for an adjustment in the Contract Price or Contract Times shall be allowed if written notice of the Claim was not given prior to final payment.

~~B. *Final Resolution of Disputes*: For any dispute subject to resolution under this article, Owner or Contractor may:~~

~~1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;~~

~~2. agree with the other party to submit the dispute to another dispute resolution process; or~~

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~~3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.~~

B. Final Resolution of Disputes

1. Any dispute, controversy, Claim, or other matter arising under, out of, or by virtue of this Contract that is not resolved by mutual agreement shall be subject to HAR chapter 3-126, including HAR chapter 3-126, subchapter 3, "Authority to Resolve Contract and Breach of Contract Controversies."

2. All controversies between Owner and Contractor that arise under, out of, or by virtue of this Contract and that are not resolved by mutual agreement shall be decided by the Chief Procurement Officer in writing in accordance with HAR chapter 3-126.

3. The Chief Procurement Officer's written decision shall be furnished to Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

4. The Chief Procurement Officer's decision shall be final and conclusive unless fraudulent, or unless Contractor brings an action seeking judicial review of the decision in a circuit court of the State of Hawai'i within the time required by HRS chapter 103D and HAR chapter 3-126.

5. If the Chief Procurement Officer does not issue a written decision within the time required by HAR chapter 3-126, or within such longer period as may be agreed upon by the parties, Contractor may proceed as if an adverse decision had been received.

6. Contractor shall comply with any decision of the procurement officer and proceed diligently with performance of the Contract pending final resolution by a circuit court of the State of Hawai'i of any controversy arising under, out of, or by virtue of the Contract, except where there has been a material breach of contract by Owner; provided that Contractor shall proceed diligently with performance of the Contract where the chief procurement officer has made a written determination that continuation of Work under the Contract is essential to the public health and safety.

7. Nothing in this Article 17 shall be construed to require Owner to participate in arbitration or any other dispute resolution process not required by HAR chapter 3-126, unless expressly authorized by applicable Laws and Regulations and agreed to in writing by Owner.

8. To the extent any provision of Article 12 or Article 17 conflicts with HAR chapter 3-126, HRS chapter 103D, or other applicable Laws and Regulations governing State procurement disputes, the statutory and regulatory requirements shall control.

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ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

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18.07 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

~~A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.~~

A. Except for Contractor's assignment of monies receivable as provided in Paragraph 18.08.B, no assignment by either party of any rights under or interests in the Contract shall be binding on the other party without that other party's written consent. Contractor shall not transfer or assign the Contract, or any rights under or interests in the Contract other than monies receivable, without the written consent of the chief procurement officer or the head of a purchasing agency authorized to approve the assignment on behalf of Owner. No assignment shall release or discharge the assignor from any duty or responsibility under the Contract. Recognition of a successor in interest to Contractor shall also be subject to Paragraph 18.09.B.

B. Contractor may assign monies receivable under the Contract, including money due and money that may become due, after due notice to Owner, without obtaining the consent otherwise required by Paragraph 18.08.A. Such assignment of monies receivable shall not constitute a transfer of Contractor's performance obligations or release Contractor from any duty or responsibility under the Contract.

C. When Contractor requests a change in the name in which it holds the Contract, the procurement officer responsible for the Contract shall, upon receipt of a document indicating the change of name, such as an amendment to Contractor's articles of incorporation, enter into an agreement with Contractor to effect the change of name. The agreement shall specifically state that no other terms and conditions of the Contract are changed. A change of name under this Paragraph applies to the same contracting legal entity and does not authorize a transfer or assignment to a different legal entity.

18.09 *Successors and Assigns*

~~A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.~~

A. Subject to Paragraphs 18.08 and 18.09.B, Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors,

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assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents. This Paragraph does not independently authorize an assignment or recognition of a successor in interest.

B. When in the best interest of the State, Owner may recognize a successor in interest to Contractor through an assignment agreement among the transferor, the transferee, and Owner acting on behalf of the State. The assignment shall require the written consent specified in Paragraph 18.08.A. The assignment agreement shall provide that:

1. The transferee assumes all of the transferor's obligations under the Contract.
2. The transferor remains liable for all obligations under the Contract but waives all rights under the Contract as against the State, including Owner.
3. The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.

18.10 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

ARTICLE 2— CONTRACTOR POOL PROCEDURES

19.01 Pool Purpose and Eligibility

A. Contractors awarded a Contract under a construction pool solicitation will be included in SFA's qualified contractor pool and will be eligible for consideration for individual project awards in accordance with this Article.

B. Work will be assigned on an as-needed basis. Inclusion in the pool does not guarantee any project award, minimum quantity of Work, or minimum dollar value of Work.

C. Contractors will be considered for projects in the geographic areas identified in their accepted RFP Forms 5 and 7, subject to their continued qualifications and the requirements of the individual project.

D. For purposes of this Article, "working day" means Monday through Friday, excluding holidays observed by the State of Hawai'i. References to business days have the same meaning.

19.02 Project Invitations

A. For each project solicited under this Article, SFA will invite at least two qualified pool Contractors that have identified the project location as an area in which they can provide services. This minimum does not authorize fewer invitations than applicable procurement requirements otherwise require.

B. SFA will issue project invitations through the Owner's Project Management Information System, referred to in this Article as the PMIS. Each invitation will identify the project,

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location, available scope information, proposal deadline, and any scheduled pre-proposal meeting.

C. The Contract Administrator will designate a Project Coordinator for each project. The Project Coordinator will coordinate the project proposal process and serve as the contact for project information.

D. A project invitation, meeting, request for information, or request for a proposal does not authorize performance of the Work or bind SFA to award the project.

19.03 Pre-Proposal Meetings, Clarifications, and Participation

A. SFA may conduct a pre-proposal meeting at the proposed Site. Attendance will be optional unless the project invitation expressly states that attendance is mandatory. If a meeting is unnecessary or impracticable, SFA will notify the invited Contractors through the PMIS.

B. Contractors are not required to submit a proposal for every project to which they are invited. A Contractor that declines an invitation, or cannot attend a scheduled pre-proposal meeting, shall notify the Project Coordinator within three working days after receipt of the invitation. If the Contractor's availability changes afterward, the Contractor shall notify the Project Coordinator promptly.

C. Declining a project invitation or not attending an optional meeting will not, by itself, result in an adverse participation rating. For Contractors submitting proposals, participation will be evaluated under the criteria disclosed pursuant to Paragraph 19.05.

D. During the proposal period, Contractors may request clarification or additional information concerning the project. The project invitation will identify the deadline and procedure for submitting questions.

E. The Project Coordinator will distribute material clarifications, written responses, and revisions to the project requirements through the PMIS to all invited Contractors, regardless of meeting attendance. Oral statements at a meeting will not modify the project requirements unless incorporated into a written addendum.

F. Contractors and the Project Coordinator should identify apparent ambiguities, omissions, and necessary scope clarifications during the proposal period. The Project Coordinator will distribute any revised scope at least five working days before the proposal deadline. If a revision cannot be issued within that period, SFA will extend the deadline to provide at least five working days after issuance of the revision.

19.04 Project Proposal Requirements

A. SFA will provide a standard project proposal form. Each Contractor submitting a proposal shall use that form and furnish the pricing, schedule, and supporting information required by the project invitation.

B. The project scope will be organized by Project Line Item Number, or PLIN. Unless expressly designated otherwise in the project solicitation documents, each PLIN will be priced as a fixed lump sum.

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C. For any PLIN expressly designated as Unit Price Work, the Contractor shall submit the unit price and extended amount required by the proposal form. Designation of a separate PLIN does not, by itself, establish Unit Price Work under Paragraph 13.03.

D. Each proposal shall include:

1. A price for each PLIN and a total proposed price calculated as required by the proposal form.

2. A proposed project schedule identifying the anticipated duration, se quence of major activities, and required milestones.

3. Any additional documentation expressly required by the project invitation.

E. Proposals shall be submitted through the PMIS by the stated deadline.

F. Project proposals shall conform to the payment and interest provisions of the Contract Documents and applicable law. SFA will reject a proposal conditioned on payment within a period shorter than required by those provisions or on interest exceeding the amount permitted by applicable law. Terms stated in a Contractor's invoice, acknowledgment, or other communication do not amend the Contract.

19.05 Proposal Evaluation and Selection

A. SFA will evaluate project proposals using the following factors and weights:

1. Total Price: 30 percent.

2. Contractor Past Performance Evaluation Score, excluding schedule performance: 30 percent.

3. Schedule Past Performance Evaluation Score: 30 percent.

4. Contractor Participation During the Project Proposal Phase: 10 percent.

B. The project solicitation documents will identify the scoring method for each factor, the participation criteria, the date as of which past performance scores will be determined, and the procedure for resolving tied scores. Evaluation will be limited to the disclosed factors and criteria.

C. The two past performance factors will be scored separately. Schedule performance will not also be included in the Contractor Past Performance Evaluation Score that excludes schedule.

D. SFA will document the evaluation and selection determination. Subject to satisfaction of the applicable award requirements, SFA will select the Contractor whose proposal is determined to be most advantageous under the disclosed evaluation method.

E. SFA will notify the selected Contractor in writing. Following project award, SFA will provide each Contractor that submitted a complete proposal with a copy of the project evaluation scoring sheet, subject to applicable disclosure requirements and protections for confidential information.

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F. Selection does not authorize commencement of Work. Project authorization and commencement are governed by Paragraph 19.06 and Article 4.

19.06 Award Prerequisites, Project Authorization, and Administration

A. Before issuance of a project order, the selected Contractor shall furnish the compliance documentation, evidence of insurance, required bonds, and other award documents required by the General Conditions, Supplementary Conditions, and project solicitation documents. SFA will verify the required documents before issuing the order.

B. The project order shall identify the authorized Work, applicable Contract Documents, Contract Price, and Contract Times. The order shall receive Project Coordinator review and Contract Administrator approval and shall be issued by an official acting within delegated authority.

C. After the project order has been authorized and applicable prerequisites have been satisfied, the Project Coordinator will transmit the Contract Administrator's authorized Notice to Proceed through the PMIS. The Notice to Proceed shall identify the commencement date. Commencement of Contract Times and performance of the Work remain subject to Article 4, as supplemented.

D. To the extent HRS 103D-309 applies, neither the Contract nor a project order subject to that statute shall become binding or effective until the official authorized by the statute has certified the sufficiency of the required appropriation or available appropriation balance. Applicable statutory exceptions and provisions governing multi-term contracts and supplemental funding remain in effect.

E. Owner shall obtain and administer required funding certifications, allotments, and fiscal approvals under applicable law in coordination with Article 15. These requirements do not independently extend a statutory payment deadline or eliminate interest or penalties otherwise required by law. Any contingency based on receipt of federal funds or federal approval shall be expressly stated in the solicitation and Contract Documents.

F. Applications for Payment shall receive Project Coordinator review and Contract Administrator approval in accordance with Article 15. This Article does not establish a separate payment-review period or alter the payment deadlines established elsewhere in the Contract Documents or by applicable law.

G. Project changes shall be administered under Article 11, as supplemented. Change Orders require written approval by the Contract Administrator and issuance by an official acting within delegated authority. The Project Coordinator may prepare, review, and administer proposed changes but may bind SFA only to the extent expressly authorized in writing.

H. The Contract Administrator will determine whether proposed additional work may be authorized as a change within the scope of the Contract or must be procured separately, subject to applicable procurement requirements.

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I. Changes may be priced on a lump-sum or time-and-material basis as authorized under Article 11. For authorized time-and-material work, Contractor shall submit daily force-account records using the prescribed form. Material costs shall be supported by purchase receipts. Labor charges shall document the applicable classifications, hours, and rates, including required prevailing wages and allowable labor burdens. Allowable costs shall be determined under Article 13, as supplemented, and markups shall comply with SC11.07.

19.07 Contractor Performance Evaluations

A. The Project Coordinator will evaluate Contractor's performance periodically during each project through final acceptance, as evidenced by the Contract Administrator's signature on the Final Acceptance form.

B. Evaluations will separately address:

1. Contractor performance other than schedule performance.

2. Contractor schedule performance.

C. Each Contractor will initially receive a default score of four out of five for each past performance factor. For each factor, the default score will cease to apply when the Contractor receives its first evaluation score eligible for use under Paragraph 19.08.

D. Thereafter, each past performance score will be the arithmetic average of the Contractor's eligible project scores under this pool. Each project will contribute one score for each factor. A subsequent evaluation for that project will replace, rather than supplement, its previous score. Completed projects will contribute their final eligible scores.

E. The Project Coordinator shall complete the Contractor Evaluation Score Sheet and maintain supporting documentation sufficient to explain the ratings. Supporting documentation may include notes, photographs, correspondence, schedules, and other project records. Evaluations shall be fair, objective, and based on the disclosed evaluation criteria.

F. Documented deficiencies in safety, cleanup, and work practices may affect the applicable performance rating. Documented deficiencies in the accuracy, completeness, or substantiation of proposed change-order charges may also affect the applicable rating when included in the disclosed evaluation criteria.

G. A Contractor's good-faith exercise of its rights to request an adjustment, submit a Change Proposal or Claim, or seek review of a determination shall not, by itself, constitute grounds for an adverse rating.

H. The Project Coordinator will provide each evaluation to Contractor through the PMIS for review under Paragraph 19.08.

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19.08 Contractor Responses and Performance-Rating Reviews

A. Contractor shall submit information it believes should be considered in an evaluation to the Project Coordinator in writing within three working days after receipt of the evaluation for review.

B. Contractor may request a performance-rating review meeting with the Project Coordinator within ten working days after receipt of the evaluation. Failure to submit information within the three-working-day period does not shorten this meeting-request period.

C. Following the review meeting, the Project Coordinator will issue a written determination stating whether the evaluation is affirmed or revised.

D. Contractor may appeal the Project Coordinator's determination to the Contract Administrator by submitting a written appeal within five working days after receipt of that determination. The appeal shall identify the disputed ratings, the reasons for disagreement, and the requested correction.

E. If a review meeting with the Contract Administrator is scheduled, Contractor shall submit its written summary and supporting documentation at least three working days before the meeting.

F. The Contract Administrator will issue a written decision affirming or revising the evaluation. That decision will conclude SFA's internal performance-rating review process.

G. An evaluation will become eligible for use in future project selections after:

1. The period for requesting a Project Coordinator review meeting expires without a request;

2. The period for appealing the Project Coordinator's written determination expires without an appeal; or

3. The Contract Administrator issues a decision on a timely appeal.

While a timely review or appeal is pending, SFA will use the project's previously eligible rating, if any. If Contractor has no eligible project rating for a factor, the default score specified in Paragraph 19.07 will apply.

H. Performance-rating reviews under this Paragraph are separate from procurement debriefings, protests, Claims, and other statutory or contractual remedies. Participation in this process does not waive those remedies or extend their filing deadlines. Articles 12 and 17, as supplemented, and applicable Laws and Regulations remain controlling for matters within their scope.

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19.09 Continuing Eligibility and Pool Status

A. Contractor shall maintain the qualifications and required compliance status established by the Contract Documents and shall promptly notify the Contract Administrator of any change affecting its eligibility or ability to perform Work.

B. Contractor shall notify the Project Coordinator of changes to its geographic availability or contact information. Any change to the geographic coverage established by the Contract remains subject to applicable approval requirements.

C. A Contractor's decision not to pursue an individual project will be administered under Paragraph 19.03 and will not, by itself, constitute withdrawal from the pool.

D. Any suspension or removal from the pool shall be based on authority and procedures established in the Contract Documents or applicable law. An adverse performance rating does not, by itself, terminate an existing project order or the Contractor's pool Contract.

19.10 Pool Expiration, Termination, and Outstanding Projects

A. The pool Contract's term, renewal provisions, and termination rights are those stated in the Agreement and other applicable Contract Documents. This Article does not independently extend the pool term or establish additional termination authority.

B. New project orders may be issued only during the authorized pool term and in accordance with applicable procurement requirements.

C. Unless expressly provided otherwise in an authorized termination instrument or the Contract Documents, expiration of the pool term does not cancel previously issued project orders or relieve either party of its obligations under those orders.

D. Outstanding project orders remain subject to the applicable Contract Documents, including provisions governing completion, payment, correction, warranties, Claims, and termination.

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Exhibit a—Software Requirements for Electronic Document Exchange

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices and responses to general information requests for which there is no specific prescribed form.	PMIS Email	Email	
a.2	Meeting agendas, meeting minutes, RFI's and responses to RFI's, and Contract forms.	PMIS w/ Attachment	PDF	(2)
a.3	Contactors Submittals (Shop Drawings, "or equal" requests, substitution requests, documentation accompanying Sample submittals and other submittals) to Owner and Engineer, and Owner's and Engineer's responses to Contractor's Submittals, Shop Drawings, correspondence, and Applications for Payment.	PMIS w/ Attachment	PDF	
a.4	Correspondence; milestone and final version Submittals of reports, layouts, Drawings, maps, calculations and spreadsheets, Specifications, Drawings and other Submittals from Contractor to Owner or Engineer and for responses from Engineer and Owner to Contractor regarding Submittals.	PMIS w/ Attachment or LFE	PDF	
a.5	Layouts and drawings to be submitted to Owner for future use and modification.	PMIS Document Folder	DWG	
a.6	Correspondence, reports and Specifications to be submitted to Owner for future word processing use and modification.	PMIS Document Folder	DOCX	
a.7	Spreadsheets and data to be submitted to Owner for future data processing use and modification.	PMIS Document Folder	ELSX	
a.8	Database files and data to be submitted to Owner for future data processing use and modification.	PMIS Document Folder	DB	

Notes	
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of Contract Documents.
(2)	Transmittal of written notices is governed by Paragraph 18.01 of the General Conditions.

Key	
Email	Standard HTML or plain-text email format. Email shall be legible when viewed electronically and when printed or converted to PDF.
PDF	Portable Document Format, PDF 1.7 or later, readable by current Adobe Acrobat Reader
DWG	Autodesk AutoCAD DWG, AutoCAD 2018 file format
DOCX	Microsoft Word Open XML Document, .docx format
ELSX	Microsoft Excel Open XML Workbook, .xlsx format

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END OF SECTION

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SECTION 00 73 16

INSURANCE REQUIREMENTS

(1) Unless otherwise specified in the contract documents and/or Supplementary Conditions, Contractor shall procure or cause to be procured and maintain (as provided herein), in a company lawfully authorized to do business in Hawaii, at Contractor's sole cost, during the life of this contract and any extensions thereof, or until such time as action against Contractor or its contractors/subcontractors for death, injuries, losses and damages is barred by the provisions of Chapter 657, HRS, the following kinds and amounts of insurance to cover the operations under the contract, and all other insurance that may be required under the laws, ordinances or regulations of any governmental authority:

(A) Workers Compensation and Employers Liability Insurance. Contractor shall maintain worker's compensation and employers' liability insurance. Worker's compensation coverage shall be in accordance with State statutes. Employers' liability coverage shall provide limits not less than $1,000,000 each accident for bodily injury by accident or $1,000,000 each employee, $1,000,000 aggregate, for bodily injury by disease. The policy shall include a waiver of subrogation in favor of the Owner.

(B) Commercial General Liability Insurance. Contractor shall maintain commercial general liability (CGL) insurance with limits not less than $1,000,000 each occurrence and $2,000,000 general aggregate, and not less than $2,000,000 products-completed operations aggregate. The CGL insurance shall be written on the most recent Insurance Services Office (ISO) occurrence form CG 0001(or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations (including construction means, methods, techniques, sequences and procedures employed by Contractor or its contractor/subcontractors in connection with its operations), independent contractors, products-completed operations (including defective work product), personal injury and advertising injury, explosion, collapse and underground property damage (XCU), subsidence, exterior insulation & finish systems (EIFS), and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The policy will be endorsed with a re-definition of occurrence to include coverage for claims alleging construction defect. The Owner shall be included as an additional insured under the CGL insurance using the ISO additional insured endorsement CG 2010 1185 (or equivalent CG 2010 and CG 2037), and under the commercial excess, if any, to the full limits carried by Contractor, even if such limits exceed the requirements herein.

Further, Contractor shall maintain products and completed operations insurance with limits not less than $1,000,000 each occurrence and $2,000,000 general aggregate for at least ten (10) years following final acceptance of the work. Such continuing insurance shall be written on ISO occurrence form CG 0001 10 93 (or equivalent form) and shall, at a minimum, cover liability arising from products-completed operations, defective work product, and liability assumed under an insured contract. The Owner shall be included as an additional insured.

(C) Business Auto Liability Insurance. Contractor shall maintain auto liability (including personal injury protection coverage) insurance with limits not less than $1,000,000 combined single limit bodily injury and property damage per accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in the performance of this contract. The Owner shall be included as an additional insured and if necessary, the policy shall be endorsed to provide contractual liability coverage.

(D) Excess/Umbrella Liability Insurance. Contractor shall provide Excess/Umbrella liability insurance with limits not less than FIVE MILLION ($5,000,000) each occurrence and $5,000,000 aggregate. The Umbrella liability policy shall be excess of the Employers' Liability, General Liability and Automobile Liability insurance required herein and the Owner shall be included as an additional insured under such policy or policies to the full limits carried by Contractor, even if such limits exceed these requirements.

(E) Professional Liability Insurance. Contractor will provide Professional Liability insurance, covering Contractor, any design professionals hired by Contractor, and/or any contractors/subcontractors, and their respective employees and agents for liability arising out of errors, omissions, or negligence in the performance of professional services provided in connection with this contract. Limits shall be not less than $3,000,000 per claim, or such other limits as may be required in the contract documents. Such insurance shall remain in full force and effect continuously for the period of the design and/or construction of the work and for an additional three (3) year period following Substantial Completion of Work set forth in the contract.

(F) Contractor's Pollution Liability. Contractor will purchase a policy, with limits of not less than $2,000,000, covering third party injury and property damage claims including mold and cleanup costs as a result of pollution conditions arising from Contractor's operations or completed operations, performed by or on behalf of Contractor. Completed operations coverage will remain in effect for not less than two (2) year after Substantial Completion of the Work set forth in this contract. Coverage will be provided by a carrier acceptable to Owner, name Owner as an additional insured, and be written on an occurrence form, including Gradual and Sudden/Accidental Pollution.

(G) Property/Builder's Risk Insurance. Unless as otherwise directed by Owner, Contractor shall purchase and maintain in force property insurance/builder's risk, for the period of the contract until final acceptance of the work by the Owner. Such insurance shall provide limits equal to the full replacement cost of the work, or the contract sum including any subsequent modifications thereto, whichever is greater. Such insurance shall be written on a "Special Form" all-risk policy form, covering all risks of physical loss or damage, including coverage for collapse, explosion and underground ("XCU") perils, debris removal, and demolition occasioned by enforcement of any applicable legal requirements, and shall include coverage for reasonable compensation for architects' services and other expenses made necessary due to an insured loss. If specified in the contract documents, coverage shall also be provided, as needed, for earthquake, and flood with minimum limits of not less than 50% of the full amount of the contract. Property/builder's risk insurance shall cover loss or damage to covered property, which shall include structures or buildings, and all fixtures, materials, supplies, machinery and equipment to be used in or incidental to the work, scaffolding, falsework, fences and temporary buildings located on the site, portions of the work located away from the site but intended to be used in the site, and portions of the work in transit, and Valuable Papers and Records and all documentation produced or used in connection with the contract, with sub-limits of not less than $1,000,000. If Contractor's property/builder's risk insurance covering the work has any deductible, Contractor shall be responsible to pay the full amount of such deductible. Such property/builder's risk insurance shall be maintained in effect as required in the contract documents. The Owner shall be included as Loss Payee on all required policies. Partial occupancy or use of the work shall not commence until the insurance company or companies providing insurance as required have consented to such partial occupancy or use. Contractor shall take reasonable steps to obtain consent of the insurer(s) and Contractor and Owner agree to take no action, other than upon mutual written consent, with respect to occupancy for use of the work that could lead to cancellation, lapse, or reduction of insurance.

(2) General Conditions. General conditions applicable to all insurance herein required, unless otherwise specified above:

(A) As used herein, Owner shall mean the State of Hawaii, its elected and appointed officials, employees, agents, volunteers and construction manager (if any).

(B) Waiver of Subrogation - Contractor agrees to a Waiver of Subrogation for each applicable policy described herein. When required by the insurer, or should a policy condition not permit the Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, Contractor shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Contractor enter into such an agreement on a pre-loss basis.

(C) All insurance required herein shall apply as primary insurance with respect to all insureds and that any insurance or self-insurance carried by the Owner shall be excess and non-contributing.

(D) Except for Professional Liability insurance specified above, all insurance shall be written on an “occurrence” form of policy, unless otherwise specifically approved by the Owner.

(E) All insurance, unless as otherwise approved in writing by the Owner, shall be provided by insurers licensed to do business in the State of Hawaii, and with a current A.M. Best’s rating of not less than A:VIII.

(F) Contractors/Subcontractors Insurance. Contractor shall either include all contractors/subcontractors as insureds under all insurance set forth in section (1) above, or cause each contractor/subcontractor employed by or through Contractor to purchase and maintain insurance of the types specified above on the same terms set forth above. Contractor shall obtain and maintain evidence of contractors/subcontractors' insurance, and if requested by Owner, Contractor shall furnish copies of certificates of insurance evidencing coverage for each contractor/subcontractor.

(G) Cross-Liability Coverage. If Contractor’s liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

(H) Contractor is responsible for paying any portion of any loss not covered because of the operation of any deductible, co-insurance clause or self-insured retention applicable to the insurance required herein. If the Owner is damaged by the failure of Contractor to maintain insurance as required in this paragraph, then Contractor shall bear all reasonable costs properly attributable to that failure.

(I) Evidence of Insurance.

(i) Upon execution of the contract by Contractor, Contractor shall furnish the Owner with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with insurance requirements set forth in paragraph (1) above.

(ii) With respect to continuing insurance as required under section (1)(B)(ii) and (1)(E) and (1)(F) above, Contractor shall provide certificate(s) of insurance

evidencing such coverage at the time of final payment, and thereafter whenever requested by the Owner.

(iii) If Contractor has any self-insured retentions (SIR's) or deductibles under any of the required coverages, Contractor must identify on the certificate of insurance the nature and amount of such self-insured retentions and deductibles and provide satisfactory evidence of financial responsibility for such obligations. All deductibles and self-insured retentions will be Contractor's sole responsibility.

(iv) All policies required herein shall be written to provide not less than 30 days direct written notice to the Owner as Certificate Holder prior to the cancellation or material change of any insurance required herein (except for non-payment of premium).

(v) Contractor shall provide certified copies of all insurance policies required above within 10 days of the Owner's written request for said copies.

(vi) Failure of the Owner to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligations to maintain such insurance.

(J) Failure to Maintain Required Insurance

(i) Failure to maintain the required insurance may result in termination of this contract at the Owner's option.

(ii) The Owner shall have the right, but not the obligation, of prohibiting Contractor or any of its contractors/subcontractors from entering the project site until Contractor has provided certificates or other evidence that insurance has been placed in complete compliance with these requirements and such certificates have been approved by the Owner.

(iii) If Contractor fails to maintain the insurance as set forth herein, the Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

(K) No Representation of Coverage Adequacy. By requiring insurance herein, the Owner does not represent that coverage and limits will necessarily be adequate to protect Contractor and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the Owner under this contract. Further, Owner shall be additional insured to the total limit of Contractor's insurance, even though such limits exceed the amounts of insurance required herein.

(L) The Owner reserves the right to require additional insurance policies, additional or increased limits of coverage in existing policies and additional endorsements, including without limitation, project-specific liability insurance. Such additional insurance shall be in such amounts, on such policy forms and with such carriers as Owner may reasonably require.

END OF SECTION

SECTION 00 73 43

WAGE RATE REQUIREMENTS

PART 1 GENERAL

1.01 SUMMARY

A. This Section establishes prevailing wage, overtime, certified payroll, fringe benefit reporting, and recordkeeping requirements for Contractor and all Subcontractors performing covered Work.
B. Contractor shall comply with Chapter 104, Hawai'i Revised Statutes (HRS), and Chapter 12-22, Hawai'i Administrative Rules (HAR). Incorporate the requirements of this Section into each subcontract for covered Work and require their inclusion in all lower-tier subcontracts.

1.02 REFERENCES

A. HRS Section 103-55.5, Wages and hours of employees on public works construction contracts.
B. HRS Chapter 104, Wages and Hours of Employees on Public Works, including Sections 104-2 and 104-3.
C. HAR Chapter 12-22, Wages and Hours of Employees on Public Works, including Section 12-22-10.
D. Department of Labor and Industrial Relations (DLIR), Memorandum No. WSD 2017-01, Certified Payroll Requirements, July 10, 2017. Available through the DLIR Wage Standards Division guidelines page at https://labor.hawaiiHawai'i.gov/wsd/guidelines/.
E. HRS Section 92F-12(a)(9), public access to certified payroll records and protection of home addresses and Social Security numbers.

1.03 PRECONTRACT CERTIFICATION

A. Before entering into an Order Agreement, Contractor shall furnish the certification required by HRS Section 103-55.5, affirming compliance with prevailing wage and overtime requirements and applicable federal and state laws concerning workers' compensation, unemployment compensation, payment of wages, and safety.

1.04 WEEKLY SUBMITTALS

A. Submit to Owner weekly a certified copy of all payrolls and a certified fringe benefit reporting form for Contractor and each Subcontractor performing covered Work. Contractor is responsible for submitting payrolls from all subcontract tiers.
B. Each payroll certification shall affirm that the payroll is correct and complete, wage rates are not less than the applicable DLIR wage determination, including required adjustments, and each laborer's or mechanic's classification conforms to the work actually performed.

C. Use the DLIR fringe benefit reporting form or an equivalent certified form containing all required information. Separately itemize the costs paid for health and welfare, pension and annuity, vacation, continuing education and training, and other fringe benefits.

1.05 CERTIFIED PAYROLL CONTENT

A. Maintain accurate and complete payroll records in English and submit certified payrolls in accordance with WSD 2017-01. Include the following information for each laborer and mechanic, with confidential information submitted as required by Article 1.06:

1. Full name.
2. Home address, on the separate confidential sheet.
3. Correct job classification.
4. Rate of pay, identifying the basic hourly rate and fringe benefits.
5. Itemized fringe benefits on a fringe benefit reporting form.
6. Hours worked each workday and total hours worked each workweek.
7. Total weekly straight-time earnings.
8. Total weekly overtime earnings.
9. Total weekly gross earnings.
10. Amount and purpose of each deduction.
11. Total net wages paid.
12. Date paid.

1.06 CONFIDENTIAL EMPLOYEE INFORMATION

A. Submit each employee's home address and only the last four digits of the employee's Social Security number on a separate sheet accompanying the certified payroll. Identify the employer, Project, payroll period, and employee's full name so the sheet can be matched to the payroll. Mark the sheet "Confidential Employee Information."
B. Keep home addresses and Social Security numbers off the payroll pages intended for public inspection. Transmit the confidential sheet to Owner using Owner's designated secure method. Do not include full Social Security numbers in the weekly submittal.
C. Owner shall protect home addresses and Social Security numbers from public disclosure. Certified payroll records shall otherwise be available for public inspection and duplication as required by HRS Section 92F-12(a)(9). Segregating confidential information does not excuse submission of required information to Owner.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

3.01 PREVAILING WAGES AND OVERTIME

A. Contractor and Subcontractors shall pay each laborer and mechanic performing covered Work at least the applicable prevailing wage established by DLIR. Prevailing wages include the basic hourly rate and required fringe benefits. Classifications shall correspond to the work actually performed.
B. The applicable prevailing wage rates are published in DLIR's Wage Rate Schedules. Contractor shall comply with the rates applicable to the Work and implement subsequent wage adjustments required by Chapter 104, HRS, on their applicable effective dates.
C. Pay overtime for all hours worked on Saturdays, Sundays, and legal State holidays, and for hours exceeding eight on any other day. Compensation shall be at least one and one-half times the applicable basic hourly rate plus required fringe benefits, subject to the overtime and other premium rates required by HRS Section 104-2(c) when the basic hourly rate is established by a collective bargaining agreement.
D. Pay wages unconditionally, at least weekly, within five working days after the end of the pay period. Deductions or rebates are permitted only as allowed by law.

3.02 POSTING AND EMPLOYEE NOTIFICATION

A. Post the applicable wage rate schedules, including notes for prevailing wages and special overtime rates, in a prominent, readily accessible location at the jobsite. Keep posted schedules current.
B. Contractor and each Subcontractor shall furnish a complete copy of the applicable wage rate schedule to each laborer and mechanic when employed under the Contract. Individual distribution is not required for employees covered by a collective bargaining agreement. This exception does not waive jobsite posting requirements.
C. Contractor shall provide WSD 2017-01 to each Subcontractor performing covered Work and require distribution to lower-tier Subcontractors.

3.03 RECORD RETENTION AND ACCESS

A. Contractor and each Subcontractor shall maintain payroll and fringe benefit records throughout the Work and for at least three years after completion of construction of the Project. Retain the information required by Articles 1.05 and 1.06 and other records required by HRS Chapter 104 and HAR Chapter 12-22, including applicable apprentice registration records.
B. Make payroll records available for examination within ten days from the date of a written request by Owner, the Director of Labor and Industrial Relations, or their authorized representatives. Provide information requested for enforcement of Chapter 104 within the same period. Contractor shall ensure timely access to Subcontractor records.
C. Permit authorized representatives to interview employees during working hours on the job as provided by Chapter 104. Protect confidential employee information when providing records for examination.

3.04 CORRECTIONS AND ENFORCEMENT

A. Owner shall report certification discrepancies to Contractor and the Director of Labor and Industrial Relations. Contractor shall promptly conduct a self-audit of affected payrolls, correct deficiencies, and submit corrected certified payrolls, fringe benefit reports, and supporting documentation. Pay any wage deficiencies due.
B. Owner may withhold accrued payments as authorized by HRS Section 104-2(e) to cover differences between required prevailing wages and amounts received and retained by laborers and mechanics.
C. Owner's receipt or review of payrolls, or payment to Contractor, does not relieve Contractor or any Subcontractor of compliance obligations. These requirements supplement remedies available under applicable law and the Contract Documents.

END OF SECTION

SECTION 00 73 49

LABOR STABILIZATION AGREEMENT

PART 1 GENERAL

1.01 SUMMARY

A. Contractor and Subcontractors of all tiers shall comply with the State of Hawai'i Project Labor Agreement (PLA) for Covered Work. This Section establishes requirements for compliance documents and administration of labor matters on Covered Projects.

1.02 REFERENCES

A. Administrative Directive No. 24-01, Project Labor Agreement for State Construction Projects, dated February 16, 2024, including the State of Hawai'i PLA and Agreement To Be Bound. Published at https://budget.hawaii.gov/wp-content/uploads/2024/02/AD-24-01.pdf.

B. Comptroller's Memorandum No. 2024-20, dated July 26, 2024, and its Guidelines for Implementing Administrative Directive No. 24-01 relating to Use of Project Labor Agreements for State Construction Projects, effective July 26, 2024. Published at https://ags.hawaii.gov/wp-content/uploads/2024/11/CM2024-20v2.pdf.

C. SFA's General Terms and Conditions for Construction, as included in the Contract Documents.

D. The foregoing PLA references include subsequent State administrative directives, Comptroller's memoranda, and implementing guidelines concerning project labor agreements, together with amendments, extensions, and superseding agreements, to the extent applicable to this solicitation and Contract. Apply each issuance according to its stated effective date, scope, and applicability provisions.

1.03 DEFINITIONS AND APPLICABILITY

A. For purposes of this solicitation, "Contractor" and "Subcontractor" have the meanings stated in SFA's General Terms and Conditions for Construction, rather than the definitions in the PLA. "Covered Project," "Covered Work," and "Master Agreement" have the meanings stated in Article II of the PLA.

B. Administrative Directive No. 24-01 requires PLA compliance for executive agency Covered Projects in excess of $1,500,000. Apply the coverage requirements, exclusions, and procurement timing provisions of the PLA and Comptroller's Memorandum No. 2024-20.

C. The DAGS Guidelines apply to covered solicitations issued on or after July 1, 2024, and on or before PLA expiration. They further specify coverage for Covered Projects for which bids are opened from July 1, 2024, through PLA expiration, and exclude projects whose bid advertisement or request for proposals is published after expiration. Article XXI establishes December 31, 2026, as the expiration date unless extended by the PLA parties.

D. Once a Covered Project is subject to the PLA, its requirements continue through completion of that Project, even if the PLA expires before Project completion.

1.04 REQUIRED DOCUMENTS

A. Contractor shall execute the Agreement To Be Bound in Attachment 1 and submit a complete, fully executed copy to SFA within fourteen (14) calendar days of Project award, or as soon thereafter as is practicable as determined by SFA. Execution shall also satisfy the preperformance requirements of Article 3.01.

B. Obtain either a Letter of Assent or an Attestation of Exemption, as appropriate, executed by a person authorized to bind each Subcontractor of any tier who may be employed on the Project. Make copies available to SFA upon demand. A Letter of Assent shall be substantially in the form of the Agreement To Be Bound.

C. By submitting its executed Agreement To Be Bound, Contractor certifies that all required Letters of Assent and Attestations of Exemption have been gathered and will be made available to SFA upon demand.

D. A Subcontractor performing only trade work not represented by PLA signatories is not required to submit a Letter of Assent, but shall execute an Attestation of Exemption and timely provide it to Contractor. This exception is limited to the work described in the attestation.

1.05 ATTACHMENTS

A. Attached forms are: Attachment 1, Contractor’s Agreement To Be Bound; Attachment 2, Sample Letter of Assent; and Attachment 3, Sample Attestation of Exemption.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

3.01 EXECUTION AND SUBCONTRACTOR COMPLIANCE

A. Execute the Agreement To Be Bound before performing, assigning, awarding, or subcontracting Covered Work. Require each Subcontractor performing Covered Work to execute the required assent as a condition of accepting its subcontract and before commencing Work. Apply Article 1.04.D to Subcontractors performing only trade work not represented by PLA signatories.

B. Incorporate applicable PLA requirements into subcontracts at every tier. Contractor retains the primary obligation to meet all conditions of the PLA; subcontracting does not relieve, evade, or diminish that obligation.

C. If an exempt Subcontractor’s scope changes to include trade work subject to the PLA, require withdrawal of its Attestation of Exemption and execution of a Letter of

Assent before that Covered Work begins. Obtain required documents for added or replacement Subcontractors and make them available to SFA upon demand.

3.02 CONTINUING COMPLIANCE

A. Maintain the Agreement To Be Bound and all Letters of Assent and Attestations of Exemption in current status throughout the life of the Contract for the Covered Project.

B. Qualified Contractors and Subcontractors may participate without regard to union affiliation, provided they comply with the PLA. Execution of the Agreement To Be Bound does not require execution of another collective bargaining agreement as a condition of performing Covered Work. Comply with the obligations assumed under the PLA and Agreement To Be Bound.

3.03 LABOR DISPUTES

A. Resolve labor disputes under the procedures stated in the PLA. The State shall remain impartial in disputes between labor and Contractor management and shall not undertake conciliation, mediation, or arbitration of those disputes.

3.04 FAILURE TO PROVIDE REQUIRED DOCUMENTS

A. Failure to timely submit the required Agreement To Be Bound or to provide a required Letter of Assent or Attestation of Exemption upon demand shall be cause for SFA, in its sole discretion, to rescind the award and award the Project to the next highest ranked offeror satisfying all solicitation requirements.

ATTACHMENT 1

CONTRACTOR'S AGREEMENT TO BE BOUND

AGREEMENT TO BE BOUND

This is to certify that the undersigned Contractor has examined a copy of the Project Labor Agreement between the State of Hawai'i, the Hawai'i Construction Alliance, and its Affiliated Labor Unions, and the Unions signatory to this Agreement ("PLA"). The undersigned Contractor hereby agrees to comply with all of the terms and conditions of the PLA on this Covered Project, entitled _[Name of Project]_.

It is understood that the signing of this Agreement To Be Bound shall be as binding on the undersigned Contractor as though the Contractor had signed the above- referenced PLA. The Contractor further agrees that all of its subcontractors, of whatever tier, shall execute this Agreement To Be Bound and agree to be bound by the PLA for all work within the scope of this Covered Project, entitled _[Name of Project]_.

The Contractor agrees to pay contributions to the bona fide fringe benefit trust funds established by the applicable Master Agreement(s) for each hour worked on the Covered Project, in the amounts designated in the applicable Master Agreement(s). By signing this Agreement To Be Bound, the Contractor adopts and agrees to be bound by the legally established trust agreements governing such trust funds, which may from time to time be amended. The Contractor authorizes the parties to such trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed. The Contractor agrees to execute a separate subscription agreement in the event the trust funds so require.

CONTRACTOR/SUBCONTRACTOR: _____

Contractor State License# or Motor Carrier Permit#: _____

Name of Authorized Person (print): _____

Signature of Authorized Person: _____

Title of Authorized Person: _____

Telephone Number of Authorized Person: _____

Address of Authorized Person: _____

_____

ATTACHMENT 2

SAMPLE LETTER OF ASSENT

LETTER OF ASSENT

Contract Administrator
School Facilities Authority
State of Hawai'i
2759 S King Street, Room H201
Honolulu, Hawai'i 96826

Dear Contract Administrator:

Subject: PROJECT LABOR AGREEMENT FOR **[Insert PROJECT TITLE AND PROJECT NUMBER]** (PROJECT)

This is to certify that the undersigned SUBCONTRACTOR has examined a copy of the PROJECT LABOR AGREEMENT (PLA) for the State of Hawai'i, for the subject Project and hereby agrees to comply with all the terms and conditions of the PLA.

It is understood that the signing of this LETTER OF ASSENT shall be as binding on the undersigned SUBCONTRACTOR as though the SUBCONTRACTOR had signed the subject PLA.

This LETTER OF ASSENT shall become effective and binding upon the undersigned SUBCONTRACTOR on this_____day of_____, and shall remain in full force and effect until the completion of the subject Project Construction Contract.

Sincerely,

_____
Print Name
Company Title

SUBCONTRACTOR COMPANY NAME: _____

Contact Phone: _____

Contact Email: _____

Contact Person: _____

ATTACHMENT 3

SAMPLE ATTESTATION OF EXEMPTION

ATTESTATION OF EXEMPTION

Contract Administrator
School Facilities Authority
State of Hawai'i
2759 S King Street, Room H201
Honolulu, Hawai'i 96826

Dear Contract Administrator:

Subject: PROJECT LABOR AGREEMENT FOR **[Insert PROJECT TITLE AND PROJECT NUMBER]** (PROJECT)

This is to certify that the undersigned SUBCONTRACTOR has examined a copy of the PROJECT LABOR AGREEMENT (PLA) for the State of Hawai'i, for the subject Project and attests that it will be performing only trade work not represented by PLA signatories.

If the SUBCONTRACTOR's scope of work is amended or otherwise changed to include trade work subject to the PLA this ATTESTATION OF EXEMPTION shall be withdrawn and the SUBCONTRACTOR shall execute a LETTER OF ASSENT which shall be submitted to the CONTRACTOR/SUBCONTRACTOR and shall be available to SFA upon demand.

This ATTESTATION OF EXEMPTION shall become effective and binding upon the undersigned SUBCONTRACTOR on this_____day of_____, and shall remain in full force and effect until the completion of the subject Project Construction Contract.

Sincerely,

_____
Print Name
Company Title

SUBCONTRACTOR COMPANY NAME: _____

Contact Phone: _____

Contact Email: _____

Contact Person: _____

END OF SECTION

SECTION 00 73 63

SECURITY REQUIREMENTS

PART 1 GENERAL

1.01 SUMMARY

A. This Section establishes requirements for site security, identification, contractor certification of Harm to Students Registry compliance, student protection, and exclusion of workers. Contractor shall ensure compliance by its employees, Subcontractors of all tiers, agents, volunteers, and other persons assigned to the Work, collectively referred to as Workers.

B. Apply school access and student protection requirements to Work on public school lands and other locations where such requirements apply under law or the Contract Documents.

1.02 REFERENCES

A. HRS Section 302A-1006, Harm to students registry; requirements; due process; immunity.

B. Applicable school access and student protection requirements identified in the Contract Documents.

1.03 HARM TO STUDENTS REGISTRY APPLICABILITY

A. HRS Section 302A-1006 governs the Harm to Students Registry. Under subsection (r), the definition of “employee” includes a contractor or volunteer for an educational institution who performs a role involving interaction with a student. Under subsection (q), an individual enrolled as a student at an institution at the time of employment is exempt from that section.

B. Contractor shall comply with the registry requirements applicable to each Worker’s role. A statutory exemption from registry requirements does not waive the site security, student protection, or worker-exclusion provisions of this Section.

C. 1.04 SUBMITTALS AND COORDINATION

A. For a Project on public school lands, submit the signed Harm to Students Compliance Certification in Attachment 1 with the proposal. Contractor certification is the required compliance documentation under this Section, consistent with SFA’s arrangement with the Department of Education. The certification acknowledges obligations to be fulfilled before commencing the affected Work and maintained throughout performance.

B. Maintain the certification in current and accurate status throughout the Work. Promptly notify SFA if any certified statement becomes inaccurate and provide a corrected certification identifying the corrective action taken.

C. Include the costs of compliance with requirements established by the Contract Documents in the Proposal Price. Plan and schedule compliance activities to avoid delaying the Work. Requests arising from changes to those requirements shall be administered under the applicable Contract provisions.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

3.01 SITE SECURITY AND IDENTIFICATION

A. Keep work areas secure before, during, and after performing Work. Close and secure areas to which access has been provided when leaving the premises, consistent with authorized school operations and required emergency access.

B. Properly identify Workers and vehicles as belonging to Contractor or the applicable Subcontractor using company signage or logos, uniforms, name tags, or identification cards appropriate to the school's access procedures. Lock vehicles and secure equipment while on State property.

C. Confine Workers to authorized work areas and access routes. Maintain required barriers and access controls separating construction activities from students. Workers shall not engage in unauthorized interaction with students.

D. Promptly report suspicious activity or an apparent security breach to SFA and the designated site contact, providing available details. For an immediate threat to life or safety, contact emergency services first and notify SFA as soon as practicable.

3.02 HARM TO STUDENTS COMPLIANCE

A. Fulfill the commitments in Attachment 1 before Workers commence duties subject to applicable registry requirements and throughout performance. Contractor is responsible for implementing, maintaining, and monitoring compliance for Workers at all subcontract tiers.

B. Apply the requirements to new and replacement Workers and to changes in assignments involving student interaction. Do not assign a Worker to duties prohibited by applicable registry requirements. Immediately remove a Worker from affected duties upon learning that the Worker does not satisfy those requirements, and promptly notify SFA.

C. Maintain records supporting the certification and provide documentation of compliance to SFA upon request, subject to applicable confidentiality restrictions. Protect personal information from unauthorized disclosure. This Section does not require Contractor to obtain direct access to the confidential registry or submit its contents.

3.03 EXCLUSION OF WORKERS AND ENFORCEMENT

A. SFA may require Contractor to remove a Worker from Work under the Contract or a Project order. SFA shall provide written notice stating the scope and effective date of exclusion. Contractor shall comply on that date and arrange a compliant replacement when needed.

B. Contractor may appeal an exclusion to SFA in writing within ten (10) working days after receipt of the notice. Exclusion remains in effect pending the appeal. The exclusion governs Project assignments and access identified in the notice and does not direct Contractor to terminate the Worker's employment.

C. Require Subcontractors at every tier to comply with this Section. Failure to comply may constitute a material breach and may result in removal of Workers, suspension of Work, termination for default, withholding of payment, or other remedies to the extent authorized by the Contract or applicable law.

ATTACHMENT 1
PROPOSAL FORM 1

HARM TO STUDENTS COMPLIANCE CERTIFICATION

Project Name: _____

Bidder: _____

The undersigned, on behalf of the Bidder, certifies and acknowledges the following:

1. The Bidder acknowledges the requirements of Section 302A-1006, Hawai'i Revised Statutes, and all Contract requirements relating to criminal history record checks and the prevention of harm to students.
2. If awarded a Contract, the Bidder shall ensure that all employees, subcontractors, agents, and other persons assigned to the Project comply with all applicable requirements before entering school grounds or otherwise performing work requiring such compliance.
3. The Bidder shall be solely responsible for obtaining, maintaining, monitoring, and verifying compliance for all employees, subcontractors, agents, and other persons assigned to the Project.
4. The Bidder shall ensure that all subcontractors and lower-tier subcontractors are contractually required to comply with these requirements.
5. The Bidder certifies that all costs associated with compliance, including administration, monitoring, background checks, and any related project impacts, are included in the Bid Price and no additional compensation shall be due from the State for such compliance.
6. The Bidder shall plan and schedule its work to ensure compliance with these requirements does not delay Project performance.
7. The Bidder shall immediately remove from the Project any individual who fails to satisfy applicable requirements or whose authorization to work on the Project is revoked, suspended, expired, or otherwise invalid.
8. The Bidder acknowledges that failure to comply with these requirements may constitute a material breach of Contract and may result in removal from the Project, suspension of work, termination for default, withholding of payment, or any other remedy available under the Contract or applicable law.

I certify under penalty of law that the foregoing statements are true and correct.

Authorized Representative: _____

Title: _____

Signature: _____

Date: _____

END OF SECTION

SECTION 00 73 73

STATUTORY REQUIREMENTS

1. CONTRACTOR LICENSING

1. Contractor and each Subcontractor shall hold and maintain all licenses required for their respective portions of the Work under Chapter 444, Hawai'i Revised Statutes, and Chapter 16-77, Hawai'i Administrative Rules.

    2. A general engineering or general building contractor may perform specialty work only within classifications it is authorized to perform, including classifications held automatically under HAR Section 16-77-32. Work outside those classifications shall be performed by appropriately licensed Subcontractors. Status as the prime contractor does not independently authorize performance of specialty work.

    3. Before the applicable portion of the Work begins, Contractor shall submit to Owner the performing entity's legal name, contractor license number, applicable classifications, and assigned scope of work. Contractor shall provide updated information before a replacement entity begins work and promptly notify Owner of any license expiration, suspension, revocation, or other restriction affecting performance.

    4. These submittals do not extend or replace licensing, qualification, or subcontractor identification deadlines established by law or the solicitation.

2. LEAD RENOVATION, REPAIR, AND PAINTING

1. Contractor shall comply with the United States Environmental Protection Agency's Lead Renovation, Repair, and Painting Rule, 40 CFR Part 745, Subpart E, for Work subject to that rule, including covered renovations disturbing painted surfaces in pre-1978 target housing or child-occupied facilities, as those terms are defined by the rule.

2. Each firm required to be certified under the rule, including applicable Contractor and Subcontractor entities, shall maintain current firm certification. Each covered renovation shall have an assigned certified renovator who performs the responsibilities required by the rule. Other individuals performing covered renovation activities shall be certified renovators or shall receive and have documented the training required by the rule.

3. Contractor shall ensure compliance with applicable pre-renovation education, notification, containment, work practice, cleaning, cleaning verification, and recordkeeping requirements.

4. Before covered Work begins, Contractor shall submit to Owner the applicable firm certifications, the assigned renovator's certification documentation, and identification of the affected work areas. Contractor shall submit replacement certification and

assignment information before replacement firms or renovators undertake the affected Work.

5. If Contractor proposes to rely on an exclusion or exception under the rule, Contractor shall submit its written basis and supporting documentation to Owner before proceeding on that basis. Owner's receipt or review does not establish regulatory eligibility for an exclusion or exception.
6. Contractor shall maintain required compliance records, provide copies to Owner as required by the Contract Documents, and submit the completed compliance documentation with project closeout. Records shall be retained for the periods required by applicable law and the Contract Documents, whichever requires longer retention.
7. RRP compliance does not replace separate requirements applicable to lead abatement, worker protection, waste management, or other regulated activities.

3. RELATIONSHIP TO OTHER CONTRACT REQUIREMENTS

1. These licensing and RRP provisions supplement the Contractor's compliance obligations under the General Conditions and Supplementary Conditions. Identification of specific requirements does not limit the obligation to comply with other applicable Laws and Regulations.
2. Owner's or Engineer's receipt or review of licensing or certification documentation does not relieve Contractor or any Subcontractor of its compliance obligations.

4. RELATIONSHIP TO OTHER CONTRACT REQUIREMENTS

1. AG-008-103D, General Conditions, attached to this Section, is incorporated into and forms part of the Contract Documents.

ATTACHMENT 1
AG-008-103D, GENERAL CONDITIONS

EXHIBIT A

GENERAL CONDITIONS

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EXHIBIT A

GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.

2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.

   a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.

   b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.

   c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

   d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

   e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.

   f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.

b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

(1) The Assignee assumes all of the CONTRACTOR'S obligations;

(2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and

(3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.

d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.

9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.

10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.

11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.

12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

(1) Cancel the stop performance order; or

(2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

(1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and

(2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.

f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.

b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

(1) Any completed goods or work product; and

(2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

(1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.

(2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.

(3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:

(A) Contract prices for goods or services accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

(4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or

(C) Within such further time as may be allowed by the Agency procurement officer in writing.

(2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

(3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

(4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.

c. Prompt payment.

(1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.

b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

(A) Changes in the work within the scope of the Contract; and

(B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.

d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.

f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least $25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.

h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.

i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.

20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

(1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;

(2) Method of delivery; or

(3) Place of delivery.

a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.

c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.

d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:

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

(2) By unit prices specified in the Contract or subsequently agreed upon;

(3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;

(4) In such other manner as the parties may mutually agree; or

(5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.

b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:

(1) Description of performance (Attachment 1);

(2) Time of performance (i.e., hours of the day, days of the week, etc.);

(3) Place of performance of services;

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;

(5) Method of shipment or packing of supplies; or

(6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.

d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.

e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.

24. Confidentiality of Material.

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.

b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.

26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.

27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

    a. The cost or pricing data, and

    b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over $100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

    If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

    (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

    (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.

36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.

38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.

40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.

42. Confidentiality of Personal Information.

a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

(1) Social security number;

(2) Driver's license number or Hawaii identification card number; or

(3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

(1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.

(2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

(3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.

(4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.

(5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.

(6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

(1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

(2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

(1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

(2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

(1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

(2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

END OF SECTION