

## **INDEMNIFICATION AGREEMENT**

The undersigned (the "Contractor") is a contractor hired by the State of Hawaii (the "State") for that certain Federal Aid Project No. ER-15 (20) relating to the construction, preservation and protection of Emergency Earthquake Rockfall Repairs, Various Location on Hawaii, Unit 2, Route 11, Mamalahoa Highway, Milepost 108.8 to 117.6, District of North Kona, Island of Hawaii, Hawaii (the "Project").

As a material condition of the agreement of Hanato Corporation (Lessor), Yvonne Mikie Hanato-Wells, and James N. Wells (Lessees) (the "Owner") to allow the State and its Contractor to enter onto property identified as being a portion of Tax Map Key No. (3) 7-9-004:13, as shown delineated on Exhibit A attached hereto and incorporated herein by reference (hereafter referred to as the "Property"), pursuant to the terms of that certain Right-of-Entry Agreement, dated March 9, 2011 (the "Agreement"), the Contractor hereby agrees to indemnify, hold harmless, compensate and insure the Owner, its successors and assigns, and each of their respective officers, employees and agents (individually and collectively, the "Indemnitees") against any liability, including all loss, damages, cost, expenses and attorney's fees, incurred by the Indemnitees directly or indirectly, resulting from, arising out of or in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, concerning or related to the Contractor's work on the Property, including, without limitation, entry pursuant to the Agreement, any damage to real or personal property, including environmental damage, and any injury to or death of persons.

The Contractor warrants and represents that the Owner is an additional insured on the commercial general liability and automobile liability insurance policies

(individually and collectively, the "Policies") that are prescribed by the contract between the Contractor and the State relating to the Project. The limit of liability for the commercial general liability insurance coverage is not less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) per occurrence for the following liability coverages: (a) bodily injury, (b) advertising and (c) property damage. The limit of liability for the automobile liability insurance coverage is not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per accident for the following liability coverages: (a) bodily injury and (b) property damage. The Contractor covenants that the Policies shall not be cancelled or materially changed without at least thirty (30) days' prior written notice to the Owner and insurance policies shall also provide a waiver of subrogation in Owner's favor and coverage for Contractor's completed operations. In the event that the limits of liability insurance required by the State's contract with the Contractor are less than the limits of liability insurance required by the Right-of-Entry Agreement by the State and the Owner, the Contractor shall procure and provide the limits of liability insurance required by the Right-of-Entry Agreement.

If any provision in this Indemnification Agreement is held invalid or not enforceable to its full extent, such provision shall be enforced to the fullest extent permitted by law, and the validity of the remaining provisions hereof will not be affected thereby. This Indemnification Agreement shall inure to the benefit of, and shall be binding upon, the Contractor, and its heirs, personal representatives, successors and assigns. Any rules of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Indemnification Agreement. This Indemnification Agreement shall be governed by, and construed in accordance with, the laws of the State of

Hawaii. The individual(s) executing this Indemnification Agreement on behalf of the Contractor represent(s) to the Owner that such individual(s) are authorized to do so by requisite action of the Contractor.

IN WITNESS WHEREOF, the Contractor has executed this Indemnification Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CONTRACTOR

By \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF HAWAII

)  
) SS.  
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On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me  
personally appeared \_\_\_\_\_ and  
\_\_\_\_\_, to me personally known, who, being by me  
duly sworn, did say that they are the \_\_\_\_\_ and  
\_\_\_\_\_, respectively, of \_\_\_\_\_  
\_\_\_\_\_ and that said instrument was signed on behalf of said  
corporation by authority of its Board of Directors, and said officers acknowledged said  
instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_