

1       **SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

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3       Make the following amendments to said Section:

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5       **(I)     Amend 107.01     Laws to be Observed** to read as follows:

6  
7       **"107.01   Laws to be Observed; Indemnity.**   The Contractor at all times shall  
8       observe and comply with all Federal, State, and local laws, ordinances, rules,  
9       regulations, and permit and license requirements which in any manner affect  
10      those engaged or employed in the work, the materials used in the work, and the  
11      conduct of the work.   The Contractor shall comply with all orders and decrees  
12      of government bodies or officials having any jurisdiction or authority over the  
13      work whether such orders or decrees are directed to the Contractor, its  
14      subcontractors, vendors, and suppliers, or to the State.

15  
16       No instruction in the contract documents or contained within any directive  
17      from the Engineer to the Contractor to observe and comply with any specific law,  
18      ordinance, rule, regulation or permit or license requirement shall limit the duty of  
19      the Contractor to observe and comply with all other laws, ordinances, rules,  
20      regulations or permit or license requirement that relate to the work.

21  
22       The Contractor shall immediately notify the Engineer in writing of any  
23      orders, directives, notices, decrees, or warnings issued by any governmental  
24      agency to the Contractor, its subcontractors, vendors, and suppliers that a  
25      violation of law, rules, regulations, or permit or license requirement is alleged to  
26      have occurred or is occurring in connection with the work.

27  
28       The Contractor shall defend, protect, hold harmless, compensate, and  
29      indemnify the State, its officers and employees, against any claim or liability  
30      arising from or based on the violation of any laws, ordinances, rules and  
31      regulations, orders or decrees, or the terms and conditions of any permits and  
32      licenses, whether such orders or decrees are directed to the Contractor, its  
33      subcontractors, vendors, and suppliers or to the State."

34  
35       **(II)    Amend 107.02    Wages and Hours Requirements** as follows:

36  
37       Amend the first paragraph to read as follows:

38  
39       **"107.02    Wages and Hours Requirements.**    The Contractor shall at all  
40      times observe and comply with all provisions of Chapter 104, HRS, which are  
41      emphasized in Attachment I entitled 'Requirements of Chapter 104, HRS Wages  
42      and Hours of Employees On Public Work Law', appended hereto and which  
43      require, in part, the following:"

44  
45       Amend **(A)   Hours of Labor** by revising the first paragraph to read as follows:

47 **"(A) Hours of Labor.** No work shall be done over 8 hours in any one  
48 day, Saturdays, Sundays, or legal holidays of the State without written  
49 consent of the Engineer. If the Engineer gives consent, workers shall  
50 receive compensation at a rate of not less than one and a half times the  
51 worker's basic hourly rate if the worker works:

- 52  
53 (1) over 8 hours in one day;  
54  
55 (2) over 40 hours in one week; or  
56  
57 (3) on Saturdays, Sundays or legal State holidays  
58

59 plus the cost of fringe benefits according to wage rate schedules issued by  
60 the Director of Labor and Industrial Relations."

61  
62 Amend **(B) Rate of Wages** to read as follows:  
63

64 **"(B) Rate of Wages.** The Contractor shall pay:  
65

- 66 (1) no less than the prevailing wages, and  
67  
68 (2) no less than the increases to the prevailing wages  
69

70 to the various classes of laborers and mechanics as published in the wage  
71 rate bulletins determined by the Director of the Department of Labor and  
72 Industrial Relations (DLIR) for the entire term of the contract. For  
73 Federal projects, such wage rate schedule shall be applicable if  
74 consistent with Federal law, statutes or regulations.  
75

76 For bidding purposes, the wage rate schedule established by DLIR  
77 five calendar days before the date of bid opening shall be applicable.  
78 For Federal-Aid projects, such wage rate schedule shall be applicable if  
79 consistent with Federal law, statutes or regulations.  
80

81 Said wage rate schedule may be obtained from the Contracts  
82 Office, Department of Transportation, 869 Punchbowl Street, Honolulu,  
83 Hawaii 96813 and from the office of the Hawaii District, Highways  
84 Division. The Department will include the current State wage rate  
85 schedule physically in the contract documents executed by the successful  
86 bidder.  
87

88 The United States Department of Labor and the DLIR have  
89 established minimum wage rate schedules for workers. The Contractor  
90 shall not pay the workers less than the wages set forth on the applicable  
91 schedules.  
92

93 Flaggers who perform traffic safety duties and no actual  
94 construction work on contract subject to the Davis Bacon labor standard  
95 provisions shall be considered laborers or mechanics within the meaning  
96 of the Davis Bacon Act.  
97

98 On all Federal-Aid projects, both wage rate schedules shall apply,  
99 and the higher rates shall prevail.

100 The Contractor shall post the schedule of prevailing rates of  
101 minimum wages applicable to the work in a prominent and easily  
102 accessible place at the project site. The Contractor shall give to each  
103 worker employed under the contract a copy of that rates of wages required  
104 to be posted at the time of employment.  
105

106 The following applicable wage rate schedule or schedules shall be  
107 appended hereto:"  
108  
109

110 (III) Delete **107.04 Citizen Labor** in its entirety.  
111

112 (IV) Amend **107.07 Contractor's Licensing Laws** by revising the third  
113 paragraph to read as follows:  
114

115 "If a Contractor's license is required by law for the performance of the work  
116 which is called for in this bid, the bidder and all subcontractors must have the  
117 required license before the submission of the bidder's proposal in the case of a  
118 non-federal-aid project, and for federal-aid projects, the bidder must have the  
119 required license prior to the award of the project and all subcontractors prior to  
120 the start of the subcontracted work."  
121

122 (V) Amend **107.08 Permits, Licenses, And Taxes** to read as follows:  
123

124 "**107.08 Permits and Licenses.** As part of the contract price, the Contractor  
125 shall obtain all permits and licenses required by law to perform the work and pay  
126 charges, fees, and taxes incidental to obtaining such permits and licenses.  
127 The Contractor assumes exclusive responsibility for identifying and acquiring all  
128 permits and licenses necessary to perform the work, except for those permits  
129 and licenses identified in the contract documents as being the responsibility of  
130 the State.  
131

132 The terms and conditions of any permit or license required for  
133 performance of the work, whether or not issued in the name of the Contractor,  
134 are incorporated into the contract. Compliance with such terms and conditions  
135 are duties owed by the Contractor to the State under the contract.  
136 Notwithstanding the enforcement authority of the permitting or licensing agency,  
137 whether or not a State agency, non-compliance by the Contractor with any term

or condition of such license or permit shall be deemed non-compliance with the contract and may constitute grounds for default.

A Noise Variance application may be processed for this project through the Department of Health for approval. Should the Department of Health deny the request for Noise Variance, the State will have the right to have part or all of the contract work done during the day. The Engineer and the Contractor will negotiate compensation for doing such work during the day.

The Engineer may allow the Contractor to perform formwork and concrete work during the following hours (as covered by the Community Noise Variance):

Monday thru Thursday      8 P.M. – Midnight

Tuesday thru Friday      12:01 A.M. – 7 A.M.

In addition: If the Contractor needs additional work time to perform formwork and concrete work, the following times will be covered under the Community Noise Variance in specified project locations. Coverage under the variance is granted under the condition that the contractor provides advance written notice to the Department of Health, Noise Radiation and Indoor Air Quality Branch, as well as designated recipients of project information in the immediate area of such construction:

Friday      6 P.M. – Midnight

Saturday      12:01 A.M. – 9 A.M.  
6:00 P.M. – Midnight

Sunday      24 Hours

The Contractor shall be subject to the following conditions during the variance hours:

(1) The Contractor shall notify the Noise and Radiation Branch, State Department of Health and the Resident Engineer in writing as to the date, type of activity, and the time of variance-hours activity within 48 hours of said activity.

(2) The Contractor shall use muffled construction equipment properly.

(3) The Contractor shall disconnect reverse signal alarms.

The Contractor is required to comply with the conditions of the variance indicated in the contract or as amended. The Engineer will not consider revocation of the variance, amendments to the variance conditions or the

Contractor's non-compliance with the conditions under which the Contractor will operate the equipment and vehicles.

The Engineer may grant time and/or cost adjustment to the extent the Engineer determines that the Contractor was not a contributing factor for such delay."

(VI) Delete 107.11 Federal Aid Provisions in its entirety.

(VII) Amend 107.12 Sanitary, Health, And Safety Provisions to read as follows:

**"107.12 Safety: Accident Prevention.**

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

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

(3) Authorized Federal, State, and local officials shall have right of entry to any site of contract performance to inspect, investigate, and enforce the matter of compliance with the construction safety and health standards referred to herein."

(VIII) Amend 107.13 Public Convenience and Safety to read as follows:

**"107.13 Contractor Duty Regarding Public Convenience.** The Contractor shall at all times conduct the work in such manner and in such sequence as will insure the least practicable interference with pedestrian, bicycle, and motor passageways. The Contractor shall plan and provide appropriate detours, signs, flashers, personnel, warnings, barricades and other devices for safely and legally handling pedestrian, bicycle, and motor traffic."

(IX) Delete 107.14 Barricades and Warning Signs in its entirety.

(X) Amend 107.15 Use of Explosives or Combustibles to read as follows:

230 **"107.15 Use of Explosives.** The use of explosives will not be permitted."

231  
232 **(XI) Amend 107.16 Protection and Restoration of Property and**  
233 **Landscaping to read as follows:**

234  
235 **"107.16 Protection of Persons and Property.**

236  
237 **(A) Contractor's Responsibility for Damage to Property.** All  
238 damage, injury or loss to any property caused during the course of, or  
239 arising out of the work, whether or not caused by negligent acts or  
240 omissions, shall be the responsibility of the Contractor and shall be  
241 remedied promptly by the Contractor. This provision shall not affect the  
242 Contractor's legal rights of subrogation, contribution, and indemnity to  
243 recover the costs of remedial measures and other damages to which it  
244 may be entitled.

245  
246 **(B) Safety Precautions and Programs.** The Contractor shall notify  
247 owners of adjacent properties and of underground (or overhead) utilities  
248 when performing work which may affect the owners; and shall cooperate  
249 with the owners in the protection, removal and replacement of their  
250 property.

251  
252 The Contractor shall not permit any load to be placed on the work,  
253 any structure, or roadway or any other location that may endanger the  
254 safety of any persons or cause damage to any property. The Contractor  
255 shall not injure or destroy trees or shrubs nor remove or cut them without  
256 permission of the Engineer. Contractor shall protect all land monuments  
257 and property marks until an authorized agent has witnessed or otherwise  
258 referenced their location and shall not remove them until directed.

259  
260 In the event the Contractor encounters on the site material  
261 reasonably believed to be asbestos or other hazard material that has not  
262 been rendered harmless, the Contractor shall stop work in the area and  
263 notify the Engineer promptly. The work in the affected area shall be  
264 resumed in the absence of hazard materials or when the hazard has been  
265 rendered harmless.

266  
267 **(C) Notification to the Engineer.** The Contractor shall notify the  
268 Engineer in writing not later than noon of the following working day  
269 whenever:

270  
271 **(1) Police, fire or other public safety officers are called to the**  
272 **work site for any reason or are present at the work site for any**  
273 **public safety related reason.**  
274

275 (2) Any person is treated or evacuated from the work site by  
276 emergency medical services personnel.

277  
278 (3) Any member of the public claims to have been injured at the  
279 work site.

280  
281 (4) The Contractor witnesses a member of the public being  
282 involved in an accident at the worksite, or on account of conditions  
283 related to the work, whether or not visible injuries occur.

284  
285 (5) Any representative of a Federal, State, or County  
286 regulatory or enforcement agency is present at the work site  
287 including but not limited to any representative of Department of  
288 Health, EPA, OSHA, and public works."

289  
290 **(XII) Amend 107.17 Protection of Rivers, Streams, Impoundments,**  
291 **Forests and Archeological, Historical, and Burial Site Findings to read as**  
292 **follows:**

293  
294 **"107.17 Pollution Control and Protection Of Archeological, Historical,**  
295 **and Burial Sites.**

296  
297 **(A) Erosion, Siltation and Pollution Control.** The Contractor shall  
298 exercise precaution to prevent silting and pollution of oceans, rivers,  
299 streams, lakes, and reservoirs and other bodies and conveyances of  
300 water.

301  
302 The Contractor shall provide for pollution and erosion control during  
303 the work including periods of suspension of contract performance. If  
304 material begins to erode into a body of water or water conveyance, the  
305 Contractor shall act immediately to bring the siltation, erosion, and  
306 pollution under control.

307  
308 The Contractor will be required to adhere to the following  
309 Department of Transportation policies: 1) Non- Structural Pollution-Control  
310 Measures which describes general non-structural Best Management  
311 Practices the contractor must follow during construction; and 2) Inspection  
312 and Maintenance Report Forms which the construction engineer and  
313 inspector must complete during construction of the project.

314  
315 Contractor(s) must provide Site-Specific Construction BMPs  
316 Plan(s) that contain a drawing showing the location and details (with  
317 dimensions) of all BMPs.

318  
319 Hanamaulu Stream, Hanapepe River, Nawiliwili Stream, Waimea  
320 River, Hanapepe Bay, Nawiliwili Bay, Wailua River, and Waimea Bay are

Water Quality-Limited Segments (WQLSs) as listed by the Department in accordance with Subsection 303(d) of the Clean Water Act. The State of Hawaii, Department of Health stance is that there shall be no net increases in project-related loads to the WQLSs. For the Water Quality Limited Segments listed above contractor(s) are required to provide Site-Specific Construction BMPs Plan that include control measures to prevent net increases in pollutant loads.

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

**(XIII) Amend 107.21 Contractor's Responsibility for Utility Property and Services to read as follows:**

**"107.21 Utilities and Services.**

**(A) Contractor's Duty to Coordinate Utility Work.** The Contractor shall contact and cooperate with each affected utility owner in order for the work to progress on schedule and without unreasonable disruption of such utility services. If the work calls for permanent utility service installation and/or corrections and modifications to existing utilities, the Contractor is responsible for scheduling and coordinating such work with appropriate utility owners. If the work required by the contract documents conflicts with the instructions, demands, or requirements of a utility owner, the Contractor shall notify the Engineer immediately. The Contractor shall furnish the Engineer with evidence that the Contractor has provided all relevant utility owners reasonable opportunity to review the drawings.

When the State has a separate agreement with a utility owners for work to be performed within the worksite, at the direction of the Engineer the Contractor shall make available all portions of the work and the worksite necessary for the utility owners to do their work.

The Contractor hereby holds the State harmless against all risks arising from acts or omissions of utility owners that damage the work, or create delays, disruptions, and additional cost to the Contractor in the



367 performance of the work. Contract Time for the work may be extended  
368 in accordance with Subsection 108.06 - Contract Time on account of acts  
369 and omissions of utility owners that delay the work without fault of the  
370 Contractor.

371  
372 The Contractor may relocate or adjust the utility lines or service  
373 connections for its convenience with the permission of the owner of the  
374 utility and the Engineer at no cost to the State.

375 **(B) Contractor's Duty to Locate and Protect Utility.** Before  
376 beginning any work at the worksite, the Contractor shall:  
377

378 (1) Ascertain and mark the exact location and depth of all  
379 utilities within the project area including taking reasonable steps to  
380 detect the existence and location of utilities not shown on the  
381 drawing.  
382

383 (2) Acquaint all personnel working near utilities with the type,  
384 size, location, and depth of the utilities, as well as the  
385 consequences that might result from disturbances.  
386

387 (3) Take reasonable steps to protect the utilities and prevent  
388 service disruption.  
389

390 **(C) Discovery of Unknown Utility; Damage to Utility.** Upon  
391 discovery of a utility that was not shown to exist in the contract  
392 documents, or is found at a location that is substantially different than  
393 shown in the contract documents, the Contractor shall promptly notify the  
394 Engineer before the utility and its surrounding area are further disturbed.  
395 The Contractor shall be responsible for the safety and protection of the  
396 public and the utility subject to further direction from the Engineer.  
397 Whenever the Contractor damages a utility or causes any interruption to  
398 any utility service, the Contractor shall promptly notify the Engineer, the  
399 affected utility owner, and the appropriate governmental authorities.  
400 The Contractor shall cooperate with the affected utility owner, and the  
401 appropriate governmental authorities in the restoration of service. If the  
402 damage is to a known utility, the Contractor shall be responsible for all  
403 costs associated with its repair and restoration of service, at no cost to  
404 the State."  
405

406  
407 **(XIV) Add the following:**  
408

409 **"107.25 Contaminated and/or Hazardous Item and/or Material;**  
410 **Regulated Items and Material; Waste.**  
411

412 **(A) Known or Suspected Contaminated and/or Hazardous Items**  
413 **and/or Material.** If the contract documents have noted an area of  
414 known or suspected contaminated and/or hazardous items and/or material  
415 within the project limits, in the absence of specific orders from the  
416 Engineer or directions in the contract documents, the Contractor shall  
417 report the discovery of such items and/or material to the appropriate  
418 governmental agencies, cooperate with all investigations and either  
419 remediate or remove and dispose of such contaminated and/or hazardous  
420 items and/or material as part of the contract price unless otherwise noted  
421 in the contract documents. Upon encountering any such contaminated  
422 and/or hazardous condition, the Contractor shall immediately notify the  
423 Engineer.  
424

425 **(B) Unknown Contaminated and/or Hazardous Items and/or**  
426 **Material.** If the Contractor encounters or exposes any items, material  
427 or other conditions within the worksite not previously known or suspected  
428 to be contaminated or hazardous, but which exhibits properties which  
429 may indicate the presence of hazardous or contaminated items and/or  
430 material, the Contractor shall immediately notify the Engineer. Claims  
431 by the Contractor for additional money or time arising from work involving  
432 such items, material or other conditions, including the cost and time  
433 associated with notifying and providing written reports to government  
434 agencies listed below, shall be subject to the terms and conditions of  
435 Subsection 104.08 – Differing Site Conditions.  
436

437 **(C) Contractor's Duty to Report.** Whenever the Contractor  
438 encounters or exposes any hazardous or contaminated items, material or  
439 conditions at the worksite whether the existence of which was previously  
440 known, suspected, or unknown, the Contractor shall notify the State  
441 Department of Health/HEER office, the Federal Environmental Protection  
442 agency, the U.S. Coast Guard, the National Response Center, and  
443 other appropriate government agencies, and comply with any directives  
444 or instructions provided by them.  
445

446 **(D) Material and Waste Brought to the Worksite.** The Contractor  
447 shall assume sole responsibility for  
448

449 (1) The management of all regulated materials and items  
450 brought to the worksite; and  
451

452 (2) The management of all waste generated by or incidental to  
453 the Contractor's operations, including but not limited to lubricants,  
454 antifreeze, engine fluids, paints, and solvents.  
455

456 Management of such materials and items includes, but is not  
457 limited to, their transport, storage, handling, and disposal.

458  
459 (E) **Reimbursement of State Expenses.** In addition to all other  
460 remedies provided by law or contract, the State may withhold from or  
461 recover from the Contractor any money it is required to expend to  
462 remediate, remove, or dispose of any such items and material, as well  
463 as the cost of any fines or impositions made by appropriate enforcement  
464 agencies arising from the management of such items and material,  
465 whether or not the Contractor exercised due care.  
466

467 **107.26 Assignment or Change of Name.**  
468

469 (A) **General.** The Contractor shall not sell, transfer, assign, or  
470 otherwise dispose of this contract or any part hereof or any right, title, or  
471 interest herein without the written consent of the Engineer.  
472

473 The Contractor may assign money due or to become due under the  
474 contract and such assignment will be recognized by the State, if given  
475 written notice thereof, to the extent permitted by law. Any assignment  
476 of monies shall be subject to all set-offs in favor of the State and to all  
477 deductions provided for in the contract including but not limited to  
478 liquidated or actual damages for delay and money retained by the State  
479 for the completion of the work in the event that the Contractors should be  
480 in default.  
481

482 (B) **Recognition of a Successor in Interest; Assignment.** When  
483 in the best interest of the State, a successor in interest may be  
484 recognized in an assignment agreement in which the Contractor and the  
485 transferee and the State shall agree that:  
486

487 (1) The transferee assumes all of the Contractor's obligation;  
488

489 (2) The Contractor remains liable for all obligations under the  
490 contract but waives all rights under the contract against the State;  
491 and  
492

493 (3) The Contractor shall continue to furnish, and the transferee  
494 shall also furnish, all required bonds.  
495

496 (C) **Change of Name.** When a Contractor requests to change the  
497 name in which it holds a contract with the State, the Engineer shall, upon  
498 receipt of a document indicating such change of name (for example; an  
499 amendment to the articles of incorporation of the corporation), enter into  
500 an agreement with the requesting Contractor to effect such a change of  
501 name. The agreement changing the name shall specifically indicate that  
502 no other terms and conditions of the contract are thereby changed.  
503

504 **107.27 Responsibility For Damage Claims; Indemnity.** The Contractor  
505 shall compensate and make whole the State for all loss or damage to the State's  
506 property and facilities arising out of any act or omission in the performance of the  
507 work by the Contractor, any subcontractor, or their employees and agents.  
508

509 The Contractor shall defend, hold harmless, compensate, and indemnify  
510 the State, its employees and officers, against all losses, demands, claims,  
511 liabilities, suits, actions, causes of action, judgments, costs and expenses  
512 including attorneys' fees, and damages, arising out of injury to or death of any  
513 person (including employees of the State, the Contractor or any subcontractor),  
514 loss or damage to any property resulting from or in connection with performance  
515 of the work unless and until it is determined by a court of competent jurisdiction  
516 to have been caused solely by the negligence of the State.  
517

518 The State may participate in the defense of any claim or suit brought  
519 against its officers or employees, without relieving the Contractor of any  
520 obligation hereunder. The purchase of liability insurance shall not relieve the  
521 Contractor of the obligations described herein. If the Contractor and its insurer  
522 fail to undertake the defense of the State, its employees and officers, after a  
523 tender of defense has been duly made, the State may retain and withhold  
524 money to cover the Contractor's obligation whether or not the Contractor is  
525 terminated for cause.  
526

527 The Contractor shall pay all just claims for materials, supplies, tools,  
528 labor and other just claims against the Contractor or any subcontractor in  
529 connection with this contract, and the surety bond will not be released by final  
530 acceptance and payment by the State unless all such claims are paid or  
531 released. The State may, but is not obligated to, withhold or retain as much  
532 of the monies due or to become due the Contractor under this contract  
533 considered necessary by the Engineer to cover such just claims until satisfactory  
534 proof of payment or the establishment of an acceptable payment plan."  
535

536 **107.28 Right to Audit Records, Records Maintenance, Retention and**  
537 **Access.** Pursuant to Section 103D-317 HRS the State, at reasonable times  
538 and places, may audit the books and records of a Contractor, prospective  
539 contractor, subcontractor and prospective subcontractor relating to the  
540 Contractor's or subcontractor's cost or pricing data. Any such audits may be  
541 conducted by Federal and State employees or by consultants working on behalf  
542 of the State. The Contractor and subcontractor(s) shall maintain the books  
543 and records for a period of four years from the date of final payment under the  
544 contract.  
545

546 The Contractor and its subcontractors shall, in accordance with generally  
547 acceptable accounting practices, maintain fiscal records and supporting  
548 documents and related files, papers, and reports that adequately reflect all

549 direct and indirect expenditures and management and fiscal practices related to  
550 the Contractor and subcontractor's performance of work under this contract.  
551

552 The representative of the State, the Comptroller of the State of Hawaii,  
553 the Attorney General, (the Federal granting agency, the Comptroller General of  
554 the United States, and any if their authorized representatives when federal  
555 funds are utilized), and the Legislative Auditor of the State of Hawaii shall have  
556 the right of access to any book, document, paper, file, or other record of the  
557 Contractor and any subcontractor that is related to the performance of work  
558 under this Agreement in order to conduct an audit or other examination and/or  
559 make copies, excerpts and transcripts for the purposes of monitoring and  
560 evaluating the Contractor and subcontractor's performance of work and the  
561 Contractor and subcontractor's program, management, and fiscal practices to  
562 assure the proper and effective expenditure of funds and to verify all costs  
563 associated with any claims made under this contract.  
564

565 The Contractor shall provide full cooperation during all such audits and  
566 shall insure that its subcontractors comply with this requirement. The  
567 Contractor shall bear all costs (including attorney's fees) of enforcement in the  
568 event of or its subcontractor's failure or refusal to fully cooperate.  
569

570 The right of access shall not be limited to the required retention period but  
571 shall last as long as records are retained. The Contractor and subcontractor  
572 shall retain all records related to the Contractor and subcontractor's performance  
573 of work under this Agreement for four years from the date of final payment,  
574 except that if any litigation, claim, negotiation, investigation, audit or other  
575 action involving the records has been started before the expiration of the four  
576 year period, the Contractor and subcontractors shall retain and resolution of all  
577 issues that arise from it, or until the end of the four year retention period,  
578 whichever occurs later."  
579

580 **END OF SECTION**