

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

2
3 Make the following amendments to said Section

4
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 of
12 government bodies or officials having any jurisdiction or authority over the work
13 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
19 of 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
26 to 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:

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37 Amend the first paragraph to read as follows

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39 **"107.02 Wages and Hours Requirements.** The Contractor shall at all times
40 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 "

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

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

(1) over 8 hours in one day,

(2) over 40 hours in one week, or

(3) on Saturdays, Sundays or legal State holidays

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

Amend (B) **Rate of Wages** to read as follows

"(B) Rate of Wages. The Contractor shall pay

(1) no less than the prevailing wages, and

(2) no less than the increases to the prevailing wages

to the various classes of laborers and mechanics as published in the wage rate bulletins determined by the Director of the Department of Labor and Industrial Relations (DLIR) for the entire term of the contract.

For bidding purposes, the wage rate schedule established by DLIR five calendar days before the date of bid opening shall be applicable

Said wage rate schedule may be obtained from the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813. The Department will include the current State wage rate schedule physically in the contract documents executed by the successful bidder

DLIR have established minimum wage rate schedules for workers. Do not pay the workers less than the wages set forth on the applicable schedules

Consider flaggers who perform traffic safety duties and no actual construction work on this contract as laborers or mechanics

Post the schedule of prevailing rates of minimum wages applicable to the work in a prominent and easily accessible place at the project site Give to each worker employed under the contract a copy of that rates of wages required to be posted at the time of employment

(III) Delete **107.04 Citizen Labor** in its entirety

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

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

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

"107.08 Permits and Licenses. For night work, the Contractor shall be responsible in obtaining the necessary noise variance permit Contractor shall pay all necessary fees for the noise variance permit

If the State Department of Health denies the noise variance permit to allow the Contractor to work at night, the Contractor shall perform all work during the day Daytime and night time working hours and lane closures are indicated in Subsection 104 04(B)

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

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

The Engineer may grant 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

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

181 (XI) Amend 107.16 Protection and Restoration of Property and
182 Landscaping to read as follows

183
184 **"107.16 Protection of Persons and Property.**

185
186 (A) **Contractor's Responsibility for Damage to Property.** All
187 damage, injury or loss to any property caused during the course of, or
188 arising out of the work, whether or not caused by negligent acts or
189 omissions, shall be the responsibility of the Contractor and shall be
190 remedied promptly by the Contractor. This provision shall not affect the
191 Contractor's legal rights of subrogation, contribution, and indemnity to
192 recover the costs of remedial measures and other damages to which it
193 may be entitled

194
195 (B) **Safety Precautions and Programs.** The Contractor shall notify owners
196 of adjacent properties and of underground (or overhead) utilities when
197 performing work which may affect the owners, and shall cooperate with the
198 owners in the protection, removal and replacement of their property

199
200 The Contractor shall not permit any load to be placed on the work, any
201 structure, or roadway or any other location that may endanger the safety of any
202 persons or cause damage to any property. The Contractor shall not injure or
203 destroy trees or shrubs nor remove or cut them without permission of the
204 Engineer. Contractor shall protect all land monuments and property marks until
205 an authorized agent has witnessed or otherwise referenced their location and
206 shall not remove them until directed

207
208 In the event the Contractor encounters on the site material reasonably
209 believed to be asbestos or other hazard material that has not been rendered
210 harmless, the Contractor shall stop work in the area and notify the Engineer
211 promptly. The work in the affected area shall be resumed in the absence of
212 hazard materials or when the hazard has been rendered harmless

213
214 (C) **Notification to the Engineer.** The Contractor shall notify the
215 Engineer in writing not later than noon of the following working day
216 whenever:

217
218 (1) Police, fire or other public safety officers are called to the
219 work site for any reason or are present at the work site for any
220 public safety related reason

221
222 (2) Any person is treated or evacuated from the work site by
223 emergency medical services personnel
224

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

227
228 (4) The Contractor witnesses a member of the public being
229 involved in an accident at the worksite, or on account of conditions
230 related to the work, whether or not visible injuries occur

231
232 (5) Any representative of a Federal, State, or County
233 regulatory or enforcement agency is present at the work site
234 including but not limited to any representative of Department of
235 Health, EPA, OSHA, and public works "

236
237 (XI) Amend 107.17 Protection of Rivers, Streams, Impoundments,
238 Forests and Archeological, Historical, and Burial Site Findings to read as
239 follows.

240
241 "107.17 Pollution Control and Protection Of Archeological, Historical,
242 and Burial Sites.

243
244 (A) Erosion, Siltation and Pollution Control. The Contractor shall
245 exercise precaution to prevent silting and pollution of oceans, rivers,
246 streams, lakes, and reservoirs and other bodies and conveyances of
247 water

248
249 The Contractor shall provide for pollution and erosion control
250 during the work including periods of suspension of contract performance
251 If material begins to erode into a body of water or water conveyance, the
252 Contractor shall act immediately to bring the siltation, erosion, and
253 pollution under control

254
255 (B) Archaeological, Historical, and Burial Sites. Whenever the
256 Contractor encounters sites of potentially historic or archaeological
257 significance such as walls, platforms, pavements and mounds, or
258 remains such as artifacts, burials, concentration of charcoal or shells,
259 work shall cease in the immediate vicinity of the site and the site shall be
260 protected from damage The Contractor shall suspend any work that may
261 affect the site and inform the Engineer immediately Upon direction by
262 the Engineer, the Contractor shall provide and install temporary fencing
263 to protect such sites The Contractor shall not resume the work
264 suspended without the prior written direction of and subject to the
265 conditions set by the Engineer "

266
267 (XII) Amend 107.21 Contractor's Responsibility for Utility Property and
268 Services to read as follows

270 **"107.21 Utilities and Services.**

271
272 **(A) Contractor's Duty to Coordinate Utility Work.** The Contractor
273 shall contact and cooperate with each affected utility owner in order for
274 the work to progress on schedule and without unreasonable disruption of
275 such utility services. If the work calls for permanent utility service
276 installation and/or corrections and modifications to existing utilities, the
277 Contractor is responsible for scheduling and coordinating such work with
278 appropriate utility owners. If the work required by the contract documents
279 conflicts with the instructions, demands, or requirements of a utility
280 owner, the Contractor shall notify the Engineer immediately. The
281 Contractor shall furnish the Engineer with evidence that the Contractor
282 has provided all relevant utility owners reasonable opportunity to review
283 the drawings.

284
285 When the State has a separate agreement with a utility owners for
286 work to be performed within the worksite, at the direction of the Engineer
287 the Contractor shall make available all portions of the work and the
288 worksite necessary for the utility owners to do their work.

289
290 The Contractor hereby holds the State harmless against all risks
291 arising from acts or omissions of utility owners that damage the work, or
292 create delays, disruptions, and additional cost to the Contractor in the
293 performance of the work. Contract time. Time for the work may be
294 extended in accordance with Subsection 108.06 - Contract Time on
295 account of acts and omissions of utility owners that delay the work without
296 fault of the Contractor.

297
298 The Contractor may relocate or adjust the utility lines or service
299 connections for its convenience with the permission of the owner of the
300 utility and the Engineer at no cost to the State.

301
302 **(B) Contractor's Duty to Locate and Protect Utility.** Before
303 beginning any work at the worksite, the Contractor shall:

304
305 **(1)** Ascertain and mark the exact location and depth of all
306 utilities within the project area including taking reasonable steps to
307 detect the existence and location of utilities not shown on the
308 drawing.

309
310 **(2)** Acquaint all personnel working near utilities with the type,
311 size, location, and depth of the utilities, as well as the
312 consequences that might result from disturbances.

313
314 **(3)** Take reasonable steps to protect the utilities and prevent
315 service disruption.

316 **(C) Discovery of Unknown Utility; Damage to Utility.** Upon
317 discovery of a utility that was not shown to exist in the contract
318 documents, or is found at a location that is substantially different than
319 shown in the contract documents, the Contractor shall promptly notify the
320 Engineer before the utility and its surrounding area are further disturbed.
321 The Contractor shall be responsible for the safety and protection of the
322 public and the utility subject to further direction from the Engineer.
323 Whenever the Contractor damages a utility or causes any interruption to
324 any utility service, the Contractor shall promptly notify the Engineer, the
325 affected utility owner, and the appropriate governmental authorities.
326 The Contractor shall cooperate with the affected utility owner, and the
327 appropriate governmental authorities in the restoration of service. If the
328 damage is to a known utility, the Contractor shall be responsible for all
329 costs associated with its repair and restoration of service, at no cost to
330 the State.”
331

332 **(XIV) Add the following**
333

334 **“107.25 Contaminated and/or Hazardous Item and/or Material;**
335 **Regulated Items and Material; Waste.**
336

337 **(A) Known or Suspected Contaminated and/or Hazardous Items**
338 **and/or Material.** If the contract documents have noted an area of known
339 or suspected contaminated and/or hazardous items and/or material within
340 the project limits, in the absence of specific orders from the Engineer or
341 directions in the contract documents, the Contractor shall report the
342 discovery of such items and/or material to the appropriate governmental
343 agencies, cooperate with all investigations and either remediate or
344 remove and dispose of such contaminated and/or hazardous items and/or
345 material as part of the contract price unless otherwise noted in the
346 contract documents. Upon encountering any such contaminated and/or
347 hazardous condition, the Contractor shall immediately notify the Engineer.
348

349 **(B) Unknown Contaminated and/or Hazardous Items and/or**
350 **Material.** If the Contractor encounters or exposes any items, material or
351 other conditions within the worksite not previously known or suspected to
352 be contaminated or hazardous, but which exhibits properties which may
353 indicate the presence of hazardous or contaminated items and/or
354 material, the Contractor shall immediately notify the Engineer. Claims
355 by the Contractor for additional money or time arising from work involving
356 such items, material or other conditions, including the cost and time
357 associated with notifying and providing written reports to government
358 agencies listed below, shall be subject to the terms and conditions of
359 Subsection 104 08 – Differing Site Conditions
360

361 **(C) Contractor's Duty to Report.** Whenever the Contractor
362 encounters or exposes any hazardous or contaminated items, material or
363 conditions at the worksite whether the existence of which was previously
364 known, suspected, or unknown, the Contractor shall notify the State
365 Department of Health/HEER office, the Federal Environmental Protection
366 agency, the U S Coast Guard, the National Response Center, and
367 other appropriate government agencies, and comply with any directives
368 or instructions provided by them
369

370 **(D) Material and Waste Brought to the Worksite.** The Contractor
371 shall assume sole responsibility for
372

373 (1) The management of all regulated materials and items
374 brought to the worksite, and
375

376 (2) The management of all waste generated by or incidental to
377 the Contractor's operations, including but not limited to lubricants,
378 antifreeze, engine fluids, paints, and solvents
379

380 Management of such materials and items includes, but is not
381 limited to, their transport, storage, handling, and disposal
382

383 **(E) Reimbursement of State Expenses.** In addition to all other
384 remedies provided by law or contract, the State may withhold from or
385 recover from the Contractor any money it is required to expend to
386 remediate, remove, or dispose of any such items and material, as well
387 as the cost of any fines or impositions made by appropriate enforcement
388 agencies arising from the management of such items and material,
389 whether or not the Contractor exercised due care "
390

391 **107.26 Assignment or Change of Name.**
392

393 **(A) General.** The Contractor shall not sell, transfer, assign, or
394 otherwise dispose of this contract or any part hereof or any right, title, or
395 interest herein without the written consent of the Engineer
396

397 The Contractor may assign money due or to become due under the
398 contract and such assignment will be recognized by the State, if given
399 written notice thereof, to the extent permitted by law Any assignment
400 of monies shall be subject to all set-offs in favor of the State and to all
401 deductions provided for in the contract including but not limited to
402 liquidated or actual damages for delay and money retained by the State
403 for the completion of the work in the event that the Contractors should be
404 in default.
405

406 **(B) Recognition of a Successor in Interest; Assignment.** When
407 in the best interest of the State, a successor in interest may be
408 recognized in an assignment agreement in which the Contractor and the
409 transferee and the State shall agree that
410

411 (1) The transferee assumes all of the Contractor's obligation,
412

413 (2) The Contractor remains liable for all obligations under the
414 contract but waives all rights under the contract against the State,
415 and
416

417 (3) The Contractor shall continue to furnish, and the transferee
418 shall also furnish, all required bonds
419

420 **(C) Change of Name.** When a Contractor requests to change the
421 name in which it holds a contract with the State, the Engineer shall, upon
422 receipt of a document indicating such change of name (for example, an
423 amendment to the articles of incorporation of the corporation), enter into
424 an agreement with the requesting Contractor to effect such a change of
425 name. The agreement changing the name shall specifically indicate that
426 no other terms and conditions of the contract are thereby changed
427

428 **107.27 Responsibility For Damage Claims; Indemnity.** The Contractor
429 shall compensate and make whole the State for all loss or damage to the State's
430 property and facilities arising out of any act or omission in the performance of
431 the work by the Contractor, any subcontractor, or their employees and agents
432

433 The Contractor shall defend, hold harmless, compensate, and indemnify
434 the State, its employees and officers, against all losses, demands, claims,
435 liabilities, suits, actions, causes of action, judgments, costs and expenses
436 including attorneys' fees, and damages, arising out of injury to or death of any
437 person (including employees of the State, the Contractor or any subcontractor),
438 loss or damage to any property resulting from or in connection with performance
439 of the work unless and until it is determined by a court of competent jurisdiction
440 to have been caused solely by the negligence of the State
441

442 The State may participate in the defense of any claim or suit brought
443 against its officers or employees, without relieving the Contractor of any
444 obligation hereunder. The purchase of liability insurance shall not relieve the
445 Contractor of the obligations described herein. If the Contractor and its insurer
446 fail to undertake the defense of the State, its employees and officers, after a
447 tender of defense has been duly made, the State may retain and withhold
448 money to cover the Contractor's obligation whether or not the Contractor is
449 terminated for cause
450
451

452
453 The Contractor shall pay all just claims for materials, supplies, tools,
454 labor and other just claims against the Contractor or any subcontractor in
455 connection with this contract, and the surety bond will not be released by final
456 acceptance and payment by the State unless all such claims are paid or
457 released. The State may, but is not obligated to, withhold or retain as much
458 of the monies due or to become due the Contractor under this contract
459 considered necessary by the Engineer to cover such just claims until satisfactory
460 proof of payment or the establishment of an acceptable payment plan."

461
462 **107.28 Right to Audit Records, Records Maintenance, Retention and**
463 **Access.** Pursuant to Section 103D-317 HRS the State, at reasonable times
464 and places, may audit the books and records of a Contractor, prospective
465 contractor, subcontractor and prospective subcontractor relating to the
466 Contractor's or subcontractor's cost or pricing data. Any such audits may be
467 conducted by Federal and State employees or by consultants working on behalf
468 of the State. The Contractor and subcontractor(s) shall maintain the books and
469 records for a period of four years from the date of final payment under the
470 contract.

471
472 The Contractor and its subcontractors shall, in accordance with generally
473 acceptable accounting practices, maintain fiscal records and supporting
474 documents and related files, papers, and reports that adequately reflect all
475 direct and indirect expenditures and management and fiscal practices related to
476 the Contractor and subcontractor's performance of work under this contract

477
478 The representative of the State, the Comptroller of the State of Hawaii,
479 the Attorney General, (the Federal granting agency, the Comptroller General of
480 the United States, and any if their authorized representatives when federal
481 funds are utilized), and the Legislative Auditor of the State of Hawaii shall have
482 the right of access to any book, document, paper, file, or other record of the
483 Contractor and any subcontractor that is related to the performance of work
484 under this Agreement in order to conduct an audit or other examination and/or
485 make copies, excerpts and transcripts for the purposes of monitoring and
486 evaluating the Contractor and subcontractor's performance of work and the
487 Contractor and subcontractor's program, management, and fiscal practices to
488 assure the proper and effective expenditure of funds and to verify all costs
489 associated with any claims made under this contract.

490
491 The Contractor shall provide full cooperation during all such audits and
492 shall insure that its subcontractors comply with this requirement. The Contractor
493 shall bear all costs (including attorney's fees) of enforcement in the event of or
494 its subcontractor's failure or refusal to fully cooperate

498 The right of access shall not be limited to the required retention period but
499 shall last as long as records are retained The Contractor and subcontractor
500 shall retain all records related to the Contractor and subcontractor's performance
501 of work under this Agreement for four years from the date of final payment,
502 except that if any litigation , claim, negotiation, investigation, audit or other
503 action involving the records has been started before the expiration of the four
504 year period, the Contractor and subcontractors shall retain and resolution of all
505 issues that arise from it, or until the end of the four year retention period,
506 whichever occurs later

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509
510 **END OF SECTION**