

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:

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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."

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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:"

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

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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

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

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

The Engineer may grant a time adjustment, or cost adjustment, or both 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) Delete 107.15 Use of Explosives or Combustibles in its entirety.
(See Subsection 104.16 – Use of Explosives)

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

"107.16 Protection of Persons and Property.

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

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

The Contractor shall not permit any load to be placed on the work, any structure, or roadway or any other location that may endanger the safety of any persons or cause damage to any property. The Contractor shall not injure or destroy trees or shrubs that are identified in the contract documents for preservation nor remove or cut them without permission of

the Engineer. Contractor shall protect all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

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

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

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

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

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

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

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

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

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

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

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

the siltation, erosion, and pollution under control. See Section 209 – Temporary Water Pollution, Dust and Erosion Control.

Follow guidelines in the City and County of Honolulu's "Best Management Practices Manual for Construction Sites in Honolulu", in developing, installing, and maintaining BMPs for all projects. Follow City and County of Honolulu's "Rules for Soil Erosion Standards and Guidelines" for all projects on Oahu. Use appropriate Soil Erosion Guidelines for Maui, Kauai, and Hawaii projects.

(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 installations or corrections to, or modifications of 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 performance of the work. Contract time for the work may be extended

in accordance with Subsection 108.06 - Contract Time on account of acts and omissions of utility owners that delay the work without fault of the Contractor.

The Contractor may relocate or adjust the utility lines or service connections for its convenience with the permission of the owner of the utility and the Engineer at no increase in contract price or contract time.

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

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

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

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

(C) Discovery of Unknown Utility; Damage to Utility. Upon discovery of a utility that was not shown to exist in the contract documents, or is found at a location that is substantially different than shown in the contract documents, the Contractor shall promptly notify the Engineer before the utility and its surrounding area are further disturbed. The Contractor shall be responsible for the safety and protection of the public and the utility subject to further direction from the Engineer. Whenever the Contractor damages a utility or causes any interruption to any utility service, the Contractor shall promptly notify the Engineer, the affected utility owner, and the appropriate governmental authorities. The Contractor shall cooperate with the affected utility owner, and the appropriate governmental authorities in the restoration of service. If the damage is to a utility that is known, or should have been discovered before the damage occurred, the Contractor shall be responsible for all costs associated with its repair and restoration of service, at no increase in contract price or contract time."

(XIV) Add the following:

"107.25 Contaminated or Hazardous Items and Material; Regulated Items and Material; Waste.

(A) Known or Suspected Contaminated or Hazardous Items and Material. If the contract documents have noted an area of known or suspected contaminated or hazardous items or material within the project limits, in the absence of specific orders from the Engineer or directions in

the contract documents, the Contractor shall report the discovery of such items or material to the appropriate governmental agencies, cooperate with all investigations and either remediate or remove and dispose of such items and/or material as part of the contract price unless otherwise noted in the contract documents. Upon encountering any such items or material, the Contractor shall immediately notify the Engineer.

(B) Unknown Contaminated or Hazardous Items and Material. If the Contractor encounters or exposes any items, material or other conditions within the worksite not previously known or suspected to be contaminated or hazardous, but which exhibits properties which may indicate the presence of such items or material, the Contractor shall immediately notify the Engineer. Claims by the Contractor for additional money or time arising from work involving such items, material or other conditions, including the cost and time associated with notifying and providing written reports to government agencies listed below, shall be subject to the terms and conditions of Subsection 104.12 – Differing Site Conditions.

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

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

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

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

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

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

393
394 **107.26 Assignment or Change of Name.**
395

396 **(A) General.** The Contractor shall not sell, transfer, assign, or
397 otherwise dispose of this contract or any part hereof or any right, title, or
398 interest herein without the written consent of the Engineer.
399

400 The Contractor may assign money due or to become due under the
401 contract and such assignment will be recognized by the State, if given
402 written notice thereof, to the extent permitted by law. Any assignment
403 of monies shall be subject to all set-offs in favor of the State and to all
404 deductions provided for in the contract including but not limited to
405 liquidated or actual damages for delay and money retained by the State
406 for the completion of the work in the event that the Contractors should be
407 in default.
408

409 **(B) Recognition of a Successor in Interest; Assignment.** When
410 in the best interest of the State, a successor in interest may be
411 recognized in an assignment agreement in which the Contractor and the
412 transferee and the State shall agree that:
413

414 (1) The transferee assumes all of the Contractor's obligation;
415

416 (2) The Contractor remains liable for all obligations under the
417 contract but waives all rights under the contract against the State;
418 and
419

420 (3) The Contractor shall continue to furnish, and the transferee
421 shall also furnish, all required bonds.
422

423 **(C) Change of Name.** When a Contractor requests to change the
424 name in which it holds a contract with the State, the Engineer shall, upon
425 receipt of a document indicating such change of name (for example; an
426 amendment to the articles of incorporation of the corporation), enter into
427 an agreement with the requesting Contractor to effect such a change of
428 name. The agreement changing the name shall specifically indicate that
429 no other terms and conditions of the contract are thereby changed.
430

431 **107.27 Responsibility For Damage Claims; Indemnity.** The Contractor
432 shall compensate and make whole the State for all loss or damage to the State's
433 property and facilities arising out of any act or omission in the performance of the
434 work by the Contractor, any subcontractor, or their employees and agents.
435

436 The Contractor shall defend, hold harmless, compensate, and indemnify
437 the State, its employees and officers, against any loss, demand, claim,
438 liability, suit, action, cause of action, judgment, cost and expenses including
439 attorney's fees, based upon personal injury, death, or property damage which
440 arise out of the Contractor's performance under the contract, including the
441 operations and performance of one or more subcontractors, whether or not a

lawsuit is filed against the State and whether or not the Contractor is named as a party to any such lawsuit, unless and until a court of competent jurisdiction makes a final non-reviewable determination that the personal injury, death, or property damage was caused solely by the negligence of the State.

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

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

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

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

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

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

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

107.29 Insurance Requirements.

(A) Obligation of Contractor. Contractor shall obtain all required insurance as part of the contract price. The Contractor shall not commence any work until it obtains all required insurance. All required insurance must be maintained with a company authorized by law to issue such insurance in the State of Hawaii. The Contractor shall maintain all insurance until final acceptance of the work by the State.

A certificate of insurance shall be from an insurance company or agency licensed in the State of Hawaii. Certificates shall contain a provision that coverages being certified will not be cancelled or materially changed without giving the Engineer at least 30 days prior written notice by registered mail. If the State and its officers and employees are to be Additional Insureds on any of the required insurance, it shall be so noted on the certificate. Should any policy be cancelled before final acceptance of the work by the State, and the Contractor fails to immediately procure replacement insurance as specified, the State, in addition to all other remedies it may have for such breach, reserves the right to procure such insurance and deduct the cost thereof from any money due to the Contractor.

Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from its operations under this contract, including the Contractor's obligation to pay liquidated damages, nor shall it affect the Contractor's separate and independent duty to defend, indemnify and hold the State and its officers and employees, harmless pursuant to other provisions of the contract documents. The State's exercise of an option to occupy and use portions of the work does not relieve the Contractor of its obligation to maintain the required insurance until the date of final acceptance.

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

542 Upon request, the Contractor shall furnish the Engineer, a copy of
543 required policies or other proof of coverage satisfactory to the Engineer, of
544 each type of insurance covering the work. Failure to comply with the
545 Engineer's request may result in suspension of the work, and shall be
546 sufficient grounds to withhold future payments due the Contractor and to
547 terminate the contract for the Contractor's default.
548

549 **(B) Types of Insurance.** Contractor shall purchase and maintain
550 insurance described below:
551

552 **(1) Commercial General Liability (Occurrence form).**
553 Minimum limit of \$2,000,000 combined single limit per occurrence
554 for each of the following:
555

556 **(a) Products - Completed/Operations Aggregate,**
557

558 **(b) Personal & Advertising Injury, and**
559

560 **(c) Bodily Injury & Property Damage insurance with the**
561 **following minimum limits of liability:**
562

563 The State of Hawaii, its officers and employees, shall be as
564 additional insureds under these coverages.
565

566 **(2) Comprehensive Automobile Liability.** Minimum limit of
567 \$1,000,000 combined single limit per accident for bodily injury and
568 property damage
569

570 The State of Hawaii, its officers and employees, shall be as
571 additional insureds under these coverages.
572

573 **(3) Workers Compensation.** Workers' Compensation
574 insurance coverage shall be for all persons whom the Contractor
575 and all its subcontractors employ in carrying out the work under this
576 contract. This insurance shall be in strict conformity with the
577 requirements of the most current and applicable State of Hawaii
578 Worker's Compensation Insurance laws in effect on the date of the
579 execution of this contract and as modified during the duration of the
580 contract.
581

582 **(C) Breach of Duty by Contractor or Insurer.** If either the
583 Contractor or its insurer wrongfully fails to defend or indemnify the State of
584 Hawaii, its officers and employees, against any claims, the State may
585 debar or suspend the Contractor from bidding, or working on construction
586 projects, and may refuse to permit the insurer to provide insurance on
587 State construction projects.
588

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

(D) Subcontractor Insurance. The Contractor shall either:

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

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

(E) Self-Insured Retention. The Contractor shall be permitted, in cooperation with its insurers, to maintain a self insured retention for up to 25 percent of the per occurrence combined single limits of the commercial general liability and the automobile liability policies required by the contract documents. The existence of the self-insured retention must be noted on the certificate of insurance coverage submitted to the State or else it will be understood that the insurer is providing first dollar coverage for all claims. For all claims within the self-insured retention amount, the rights, duties and obligations between the Contractor and the State shall be identical to that between a liability insurer and the State, as an additional insured, as if there was no self-insured retention.

107.29 Overtime and Night Work. Normal working hours shall be from 7:00 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Work performed between 3:30 p.m. and 7:00 a.m. of the following day is "night work".

Overtime work shall be considered as work performed in excess of eight hours in any one day or work performed on Saturday, Sunday or legal holiday of the State. Overtime and night work are permissible when approved by the Engineer in writing, or as called for elsewhere within the contract documents. The Contractor shall inform the Engineer in writing at least three working days in advance of its intent to work overtime and 10 working days in advance of any night work. In addition the Contractor shall inform the Engineer of what specific work is to be done during any overtime and night period. When, in the opinion of the Engineer, an emergency exists where overtime or night work is warranted, the written notice requirement may be waived and verbal approval of the Engineer will be sufficient. The Engineer may cancel any overtime or night work previously approved when the Engineer finds that work during these periods is detrimental to public welfare, safety, or the interest of the State.

107.30 Overtime and Night Payment for State Inspection Service.

(A) State's Responsibility for State's Cost. The State shall be responsible for overtime or night work payment for State's staff and

inspection personnel including consultants when the contract requires overtime or night work to be performed, or directs the Contractor to work additional shifts or overtime for State's convenience

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

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

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

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

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

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

END OF SECTION 107