

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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6 **(I)** Amend **Section 107.01 Insurance Requirements** from lines 5 to 81 to
7 read as follows:

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9 **“(A) Obligation of Contractor.** Contractor shall not commence any
10 work until it obtains, at its own expense, all required insurance described
11 herein. Such insurance shall be provided by an insurance company
12 authorized by the laws of the State to issue such insurance in the State of
13 Hawaii. Coverage by a “Non-Admitted” carrier is permissible provided the
14 carrier has a Best’s Rating of “A-VII” or better. The Contractor shall
15 maintain and ensure all insurance policies are current for the full period of
16 the contract until final acceptance of the work by the State.

17
18 The Certificate of Insurance shall contain: a clause that it is agreed
19 that any insurance maintained by the State of Hawaii will apply in excess
20 of, and not contribute with, insurance provided by this policy; and shall be
21 accompanied by endorsement form CG2010 or equivalent naming the
22 State as an additional insured to the policy which status shall be
23 maintained for the full period of the contract until final acceptance of the
24 work by State.

25
26 The Contractor shall obtain all required insurance as part of the
27 contract price. Where there is a requirement for the State of Hawaii and
28 its officers and employees to be named as additional insureds under any
29 Contractor’s insurance policy, before the State of Hawaii issues the Notice
30 to Proceed, the Contractor shall obtain and submit to the Engineer a
31 Certificate of Insurance and a written policy endorsement that confirms the
32 State of Hawaii and its officers and employees are additional insureds for
33 the specific State project number and project title under such insurance
34 policies. The written policy endorsement must be issued by the insurance
35 company insuring the Contractor for the specified policy type or by an
36 agent of such insurance company who is vested with the authority to issue
37 a written policy endorsement. The insurer’s agent shall also submit
38 written confirmation of such authority to bind the insurer. Any delays in
39 the issuance of the Notice to Proceed attributed to the failure to obtain the
40 proof of the State of Hawaii and its officers and employees’ additional
41 insured status shall be charged to the Contractor.

43 A mere Certificate of Insurance issued by a broker who represents
44 the Contractor (but not the Contractor's insurer), or by any other party who
45 is not authorized to contractually name the State as an additional insured
46 under the Contractor's insurance policy, is not sufficient to meet the
47 Contractor's insurance obligations.
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49 Certificates shall contain a provision that coverages being certified
50 will not be cancelled or materially changed without giving the Engineer at
51 least thirty (30) days prior written notice. Contractor will immediately
52 provide written notice to the Director should any of the insurance policies
53 evidenced on its Certificate of Insurance form be cancelled, reduced in
54 scope or coverage, or not renewed upon expiration. Should any policy be
55 canceled before final acceptance of the work by the State, and the
56 Contractor fails to immediately procure replacement insurance as
57 specified, the State, in addition to all other remedies it may have for such
58 breach, reserves the right to procure such insurance and deduct the cost
59 thereof from any money due or to become due to the Contractor.
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61 Nothing contained in these insurance requirements is to be
62 construed as limiting the extent of Contractor's responsibility for payment
63 of damages resulting from its operations under this contract, including the
64 Contractor's obligation to pay liquidated damages, nor shall it affect the
65 Contractor's separate and independent duty to defend, indemnify and hold
66 the State harmless pursuant to other provisions of this contract. In no
67 instance will the State's exercise of an option to occupy and use
68 completed portions of the work relieve the Contractor of its obligation to
69 maintain the required insurance until the date of final acceptance of the
70 work.
71

72 All insurance described herein shall be primary and cover the
73 insured for all work to be performed under the contract, all work performed
74 incidental thereto or directly or indirectly connected therewith, including
75 but not limited to traffic detour work, barricades, warnings, diversions, lane
76 closures, and other work performed outside the work area and all change
77 order work.
78

79 The Contractor shall, from time to time, furnish the Engineer, when
80 requested, satisfactory proof of coverage of each type of insurance
81 required covering the work. Failure to comply with the Engineer's request
82 may result in suspension of the work, and shall be sufficient grounds to
83 withhold future payments due the Contractor and to terminate the contract
84 for Contractor's default.
85

86 **(B) Types of Insurance.** Contractor shall purchase and
87 maintain insurance described below which shall provide coverage
88 against claims arising out of the Contractor's operations under the

contract, whether such operations be by the Contractor itself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

(1) Workers' Compensation. The Contractor shall obtain worker's compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker's Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.

(2) Auto Liability. The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a Combined single Limit of not less than \$1,000,000 per occurrence for bodily injury and property damage with the State of Hawaii named as additional insured. Refer to SPECIAL CONDITIONS for any additional requirements.

(3) General Liability. The Contractor shall obtain General Liability insurance with a limit of not less than \$2,000,000 per occurrence and in the Aggregates for each of the following:

- (a)** Products - Completed/Operations Aggregate,
- (b)** Personal & Advertising Injury, and
- (c)** Bodily Injury & Property Damage

The General Liability insurance shall include the State as an Additional Insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies. Refer to SPECIAL CONDITIONS for any additional requirements.

(4) Builders Risk For All Work. The Contractor shall take out a policy of builder's risk insurance for the full replacement value of the project work; from a company licensed or otherwise authorized to do business in the State of Hawaii; naming the State as an additional insured under each policy; and covering all work, labor, and materials furnished by such Contractor and all its subcontractors against loss by fire, windstorm, tsunamis, earthquakes, lightning, explosion, other perils covered by the standard Extended Coverage Endorsement, vandalism, and malicious mischief. Refer to SPECIAL CONDITIONS for any additional requirements."

(II) Amend **Section 107.03 – Working Hours; Night Work** from lines 140 to 142 to read as follows:

“107.03 Working Hours; Night Work. Working Hours shall be Sunday Night through Friday Morning 9pm-5am, excluding Holidays. Working hours outside of these times may be requested by the contractor, with approval by the District Engineer.”

(III) Amend **Section 107.04 – Overtime and Night Work** from lines 144 to 157 to read as follows:

“107.04 Overtime 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 work is 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. In addition the Contractor shall inform the Engineer of what specific work is to be done during any overtime period. When, in the opinion of the Engineer, an emergency exists where overtime 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 work previously approved when the Engineer finds that work during these periods is detrimental to public welfare, safety, or the interest of the State.”

(IV) Amend **Section 107.06 – Contractor Duty Regarding Public Convenience** from lines 195 to 201 to read as follows:

“107.06 – Contractor Duty Regarding Public Convenience.

(A) General. The Contractor shall at all times conduct the work in such a 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.

(B) Noise Mitigation. To minimize noise impacts to those in the project area, the following measures will be employed during construction.

(1) A public information program will be employed prior to and during construction. The program will consist of:

(a) The contractor sending an informational flyer to all residents and businesses within 500 feet of the project area approximately two weeks prior to the start of construction. The flyer will include general project information and the

name and phone number of a contractor representative to contact.

(b) Providing information to the press via newspaper on at least a monthly basis.

(c) Updating of HDOT's website as needed with current information regarding the time and location of night work as well as a name and phone number to contact with questions or complaints.

(2) Quiet work procedures will be employed to attenuate and control noise emissions emanating from the construction site, such as:

(a) Disabling back up alarms and ground guides will be used for signaling when equipment backs up at night (9:00 p.m. to 5:00 a.m.).

(b) Construction activity constraints for night work, where applicable.

(c) The use of temporary noise barriers for night-time sensitive receptors, where feasible.

(d) The strategic placement of stationary equipment such as compressors and generators.

(e) All equipment will be maintained in good working order and with appropriate mufflers.

(f) A job-site representative will be designated to whom immediate complaints can be forwarded for prompt response and who will have the general responsibility of monitoring quiet work procedures.

(g) Instructional meetings will be held with construction crews and truck drivers to discuss noise abatement procedures, including the use of engine brakes, loading and unloading cargo, shouting, use of signal callers, and other practices as required.

(3) The Contractor will have a corrective action program in place that lays out steps and responsibilities to respond to complaints and correct deficiencies."

(V) Add **Section 107.18 Citizen and Residential Labor Force** after line 745 to read as follows:

“107.18 Citizen and Residential Labor Force.

(A) Citizen Labor. No person shall be employed as a laborer or mechanic unless such person is a citizen of the United States or eligible to become one; provided that persons without such qualifications may be employed with the approval of the Governor until persons who are citizens and are competent for such services are available for hire.

(B) Residential Labor Force. In accordance with Act 192; SLH 2011, no less than eighty (80) percent of the bidder's labor force working on the contract shall be provided by Hawaii residents. This act applies to all construction procurements under HRS Chapter 103D; however this act does not apply to procurements for professional services under Section 103D-304 and small purchases under Section 103D-305. This act is also applicable to any subcontract of \$50,000.00 or more in connection with this contract.

Resident means a person who is physically present in the State of Hawaii at the time the person claims to have established the person's domicile in the State of Hawaii and shows the person's intent is to make Hawaii the person's primary residence.

(C) Percentage of workforce shall be determined by dividing the labor hours (including subcontractors) provided by residents working on the project divided by the total number of hours worked by all employees of the contractor in the performance of the contract. Hours worked by employees within shortage trades as determined by the Department of Labor and Industrial Relations shall not be included in the calculation of this percentage.

(D) Certification of compliance with the forgoing provisions shall be made by the contractor in the form of a written oath submitted to the Procurement Officer on a monthly basis for the duration of the contract.

(E) Sanctions for non compliance with these provisions are as follows:

(1) With respect to the General Contractor, withholding of payment on the contract until the Contractor or its Subcontractor complies with HRS Chapter 103B as amended by Act 192, SLH 2011.

(2) Proceedings for debarment or suspension of the Contractor or Subcontractor under Hawaii Revised Statutes § 103D-702.

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274 This Section shall not apply when its application will disqualify the State
275 from receiving federal funds or aid.”

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277 **(VI)** Add **Section 107.19 Unmanned Aerial Vehicle** after line 745 to read as
278 follows:

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280 **“Section 107.19 Unmanned Aerial Vehicle**

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282 Unmanned Aerial Vehicle (UAV) or drone use is prohibited. The Contractor may
283 request the use of UAVs. Submit purpose, flight area, altitude range, waivers to
284 flight restrictions, make and specifications of UAV, equipment to be used, e.g.,
285 LIDAR, camera, IR camera, license of the operator, experience of the operator,
286 special insurance policy for UAV in kind and amount acceptable to the Engineer.
287 The Contractor may be required to demonstrate the proficiency of the UAV
288 operator to the Engineer. The proficiency test shall be with the equipment the
289 UAV shall be using. If different types of equipment will be used, then the test
290 shall be done with the heaviest equipment or bulkiest. No flights shall be
291 conducted until the Engineer finds all aspects of the Contractor’s submittal and
292 UAV operator acceptable. The Engineer’s acceptance will be for the submitted
293 equipment, insurance and operator. If any of the specified elements of the
294 submittal is changed a resubmittal and acceptance of all changes will be required
295 before any flights can take place. No flights shall be made if the insurance policy
296 is no longer valid. Insurance shall comply with the insurance requirements in
297 Subsection 107.01 Insurance Requirements with the exception that it is for a
298 UAV. The Engineer may add additional requirements at no additional cost or
299 increase in contract time. The Engineer may solely revoke the acceptance at
300 any time for any reason at no additional cost or increase in contract time. The
301 Engineer is under no obligation to accept the use of a UAV.”

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303 **END OF SECTION 107**