

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.

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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.

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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.
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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.
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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.
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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

89 contract, whether such operations be by the Contractor itself or by any
90 subcontractor or by anyone directly or indirectly employed by any of
91 them or by anyone for whose acts any of them may be liable.
92

93 **(1) Workers' Compensation.** The Contractor shall obtain
94 worker's compensation insurance for all persons whom they
95 employ in carrying out the work under this contract. This insurance
96 shall be in strict conformity with the requirements of the most
97 current and applicable State of Hawaii Worker's Compensation
98 Insurance laws in effect on the date of the execution of this contract
99 and as modified during the duration of the contract.
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101 **(2) Auto Liability.** The Contractor shall obtain Auto Liability
102 Insurance covering all owned, non-owned and hired autos with a
103 Combined single Limit of not less than \$1,000,000 per occurrence
104 for bodily injury and property damage with the State of Hawaii
105 named as additional insured. Refer to SPECIAL CONDITIONS for
106 any additional requirements.
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108 **(3) General Liability.** The Contractor shall obtain General
109 Liability insurance with a limit of not less than \$2,000,000 per
110 occurrence and in the Aggregates for each of the following:
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- 112 **(a)** Products - Completed/Operations Aggregate,
- 113
- 114 **(b)** Personal & Advertising Injury, and
- 115
- 116 **(c)** Bodily Injury & Property Damage
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118 The General Liability insurance shall include the State as an
119 Additional Insured. The required limit of insurance may be provided
120 by a single policy or with a combination of primary and excess
121 policies. Refer to SPECIAL CONDITIONS for any additional
122 requirements.
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124 **(4) Builders Risk For All Work.** The Contractor shall take out
125 a policy of builder's risk insurance for the full replacement value of
126 the project work; from a company licensed or otherwise authorized
127 to do business in the State of Hawaii; naming the State as an
128 additional insured under each policy; and covering all work, labor,
129 and materials furnished by such Contractor and all its
130 subcontractors against loss by fire, windstorm, tsunamis,
131 earthquakes, lightning, explosion, other perils covered by the
132 standard Extended Coverage Endorsement, vandalism, and
133 malicious mischief. Refer to SPECIAL CONDITIONS for any
134 additional requirements."

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

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138 **“107.03 Working Hours; Night Work.** Working Hours shall be Sunday Night
139 through Friday Morning 9pm-5am, excluding Holidays. Working hours outside of
140 these times may be requested by the contractor, with approval by the District
141 Engineer.”

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

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146 **“107.04 Overtime Work.** Overtime work shall be considered as work performed
147 in excess of eight hours in any one day or work performed on Saturday, Sunday
148 or legal holiday of the State. Overtime work is permissible when approved by the
149 Engineer in writing, or as called for elsewhere within the contract documents. The
150 Contractor shall inform the Engineer in writing at least three working days in
151 advance of its intent to work overtime. In addition the Contractor shall inform the
152 Engineer of what specific work is to be done during any overtime period. When,
153 in the opinion of the Engineer, an emergency exists where overtime work is
154 warranted, the written notice requirement may be waived and verbal approval of
155 the Engineer will be sufficient. The Engineer may cancel any overtime work
156 previously approved when the Engineer finds that work during these periods is
157 detrimental to public welfare, safety, or the interest of the State.”

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

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162 **“107.06 – Contractor Duty Regarding Public Convenience.**

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164 (A) **General.** The Contractor shall at all times conduct the work in such
165 a manner and in such sequence as will insure the least practicable
166 interference with pedestrian, bicycle, and motor passageways. The
167 Contractor shall plan and provide appropriate detours, signs, flashers,
168 personnel, warnings, barricades, and other devices for safely and legally
169 handling pedestrian, bicycle, and motor traffic.

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

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

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

181 name and phone number of a contractor representative to
182 contact.
183 **(b)** Providing information to the press via newspaper on
184 at least a monthly basis.
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186 **(c)** Updating of HDOT's website as needed with current
187 information regarding the time and location of night work as
188 well as a name and phone number to contact with questions
189 or complaints.
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191 **(2)** Quiet work procedures will be employed to attenuate and
192 control noise emissions emanating from the construction site, such
193 as:
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195 **(a)** Disabling back up alarms and ground guides will be
196 used for signaling when equipment backs up at night (9:00
197 p.m. to 5:00 a.m.).
198
199 **(b)** Construction activity constraints for night work, where
200 applicable.
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202 **(c)** The use of temporary noise barriers for night-time
203 sensitive receptors, where feasible.
204
205 **(d)** The strategic placement of stationary equipment such
206 as compressors and generators.
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208 **(e)** All equipment will be maintained in good working
209 order and with appropriate mufflers.
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211 **(f)** A job-site representative will be designated to whom
212 immediate complaints can be forwarded for prompt response
213 and who will have the general responsibility of monitoring
214 quiet work procedures.
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216 **(g)** Instructional meetings will be held with construction
217 crews and truck drivers to discuss noise abatement
218 procedures, including the use of engine brakes, loading and
219 unloading cargo, shouting, use of signal callers, and other
220 practices as required.
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222 **(3)** The Contractor will have a corrective action program in place
223 that lays out steps and responsibilities to respond to complaints and
224 correct deficiencies.”
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227 (V) Add **Section 107.18 Citizen and Residential Labor Force** after line 745
228 to read as follows:

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230 **“107.18 Citizen and Residential Labor Force.**

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

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238 (B) **Residential Labor Force.** In accordance with Act 192; SLH 2011,
239 no less than eighty (80) percent of the bidder's labor force working on the
240 contract shall be provided by Hawaii residents. This act applies to all
241 construction procurements under HRS Chapter 103D; however this act
242 does not apply to procurements for professional services under Section
243 103D-304 and small purchases under Section 103D-305. This act is also
244 applicable to any subcontract of \$50,000.00 or more in connection with
245 this contract.

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

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

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

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

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266 (1) With respect to the General Contractor, withholding of
267 payment on the contract until the Contractor or its Subcontractor
268 complies with HRS Chapter 103B as amended by Act 192, SLH
269 2011.

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

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

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

“Section 107.19 Unmanned Aerial Vehicle

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

END OF SECTION 107