

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

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3       Make the following amendments to said Section:

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

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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 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:

38  
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:"

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

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

54  
55 (1) over 8 hours in one day;

56  
57 (2) over 40 hours in one week; or

58  
59 (3) on Saturdays, Sundays or legal State holidays

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

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

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

67  
68 (1) no less than the prevailing wages, and

69  
70 (2) no less than the increases to the prevailing wages

71  
72 to the various classes of laborers and mechanics as published in the wage  
73 rate bulletins determined by the Director of the Department of Labor and  
74 Industrial Relations (DLIR) for the entire term of the contract.

75  
76 For bidding purposes, the wage rate schedule established by DLIR  
77 five calendar days before the date of bid opening shall be applicable.

78  
79 Said wage rate schedule may be obtained from the Contracts  
80 Office, Department of Transportation, 869 Punchbowl Street, Honolulu,  
81 Hawaii 96813. The Department will include the current State wage rate  
82 schedule physically in the contract documents executed by the successful  
83 bidder.

84  
85 DLIR have established minimum wage rate schedules for workers.  
86 Do not pay the workers less than the wages set forth on the applicable  
87 schedules.

88  
89 Consider flaggers who perform traffic safety duties and no actual  
90 construction work on this contract as laborers or mechanics.  
91

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."

(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 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.

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:  
269

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 an/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.

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**