

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

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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 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."

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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:"

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

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

(1) over 8 hours in one day;

(2) over 40 hours in one week; or

(3) on Saturdays, Sundays or legal State holidays

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

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

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

(1) no less than the prevailing wages, and

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

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

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

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

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

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

92 Post the schedule of prevailing rates of minimum wages applicable
93 to the work in a prominent and easily accessible place at the project site.
94 Give to each worker employed under the contract a copy of that rates of
95 wages required to be posted at the time of employment.
96

97 (III) Delete **107.04 Citizen Labor** in its entirety.
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99 (IV) Amend **107.07 Contractor's Licensing Laws** by revising the third
100 paragraph to read as follows:
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102 "If a Contractor's license is required by law for the performance of the
103 work which is called for in this bid, the bidder and all subcontractors must have
104 the required license before the submission of the bidder's proposal in the case
105 of a non-federal-aid project, and for federal-aid projects, the bidder must have
106 the required license prior to the award of the project and all subcontractors prior
107 to the start of the subcontracted work."
108

109 (V) Amend **107.08 Permits, Licenses, And Taxes** to read as follows:
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111 "**107.08 Permits and Licenses.** As part of the contract price, the Contractor
112 shall obtain all permits and licenses required by law to perform the work and pay
113 charges, fees, and taxes incidental to obtaining such permits and licenses.
114 The Contractor assumes exclusive responsibility for identifying and acquiring all
115 permits and licenses necessary to perform the work, except for those permits
116 and licenses identified in the contract documents as being the responsibility of
117 the State.
118

119 The terms and conditions of any permit or license required for
120 performance of the work, whether or not issued in the name of the Contractor,
121 are incorporated into the contract. Compliance with such terms and conditions
122 are duties owed by the Contractor to the State under the contract.
123 Notwithstanding the enforcement authority of the permitting or licensing agency,
124 whether or not a State agency, non-compliance by the Contractor with any term
125 or condition of such license or permit shall be deemed non-compliance with the
126 contract and may constitute grounds for default.
127

128 The Engineer may grant time and/or cost adjustment to the extent the
129 Engineer determines that the Contractor was not a contributing factor for such
130 delay."
131

132 (VI) Delete **107.11 Federal Aid Provisions** in its entirety.
133

134 (VII) Amend **107.12 Sanitary, Health, And Safety Provisions** to read as
135 follows:
136

137 **"107.12 Safety: Accident Prevention.**

138
139 (1) The Contractor shall provide all safeguards, safety devices and
140 protective equipment and take any other needed actions as it determines,
141 or as the Engineer may determine, to be reasonably necessary to protect
142 the life and health of employees and other persons on and around the
143 worksite and the safety of the public and to protect property in connection
144 with the performance of the work covered by the contract.

145
146 (2) The Contractor and any subcontractor shall not permit any
147 employee, in performance of the contract, to work in surroundings or
148 under conditions which are unsanitary, hazardous or dangerous to his/her
149 health or safety, as determined under construction safety and health
150 standards promulgated by the Federal, State, and local authorities.

151
152 (3) Authorized Federal, State, and local officials shall have right of
153 entry to any site of contract performance to inspect, investigate, and
154 enforce the matter of compliance with the construction safety and health
155 standards referred to herein."

156
157 **(VIII) Amend 107.13 Public Convenience and Safety to read as follows:**

158
159 **"107.13 Contractor Duty Regarding Public Convenience.** The
160 Contractor shall at all times conduct the work in such manner and in such
161 sequence as will insure the least practicable interference with pedestrian,
162 bicycle, and motor passageways. The Contractor shall plan and provide
163 appropriate detours, signs, flashers, personnel, warnings, barricades and
164 other devices for safely and legally handling pedestrian, bicycle, and motor
165 traffic."

166
167 **(IX) Delete 107.14 Barricades and Warning Signs in its entirety.**

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169 **(X) Amend 107.15 Use of Explosives or Combustibles to read as follows:**

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171 **"107.15 Use of Explosives.** The use of explosives will not be permitted."

172
173 **(XI) Amend 107.16 Protection and Restoration of Property and**
174 **Landscaping to read as follows:**

175
176 **"107.16 Protection of Persons and Property.**

177
178 **(A) Contractor's Responsibility for Damage to Property.** All
179 damage, injury or loss to any property caused during the course of, or
180 arising out of the work, whether or not caused by negligent acts or
181 omissions, shall be the responsibility of the Contractor and shall be

182 remedied promptly by the Contractor. This provision shall not affect the
183 Contractor's legal rights of subrogation, contribution, and indemnity to
184 recover the costs of remedial measures and other damages to which it
185 may be entitled.
186

187 **(B) Safety Precautions and Programs.** The Contractor shall notify owners
188 of adjacent properties and of underground (or overhead) utilities when
189 performing work which may affect the owners; and shall cooperate with the
190 owners in the protection, removal and replacement of their property.
191

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

200 In the event the Contractor encounters on the site material reasonably
201 believed to be asbestos or other hazard material that has not been rendered
202 harmless, the Contractor shall stop work in the area and notify the Engineer
203 promptly. The work in the affected area shall be resumed in the absence of
204 hazard materials or when the hazard has been rendered harmless.
205

206 **(C) Notification to the Engineer.** The Contractor shall notify the
207 Engineer in writing not later than noon of the following working day
208 whenever:
209

210 (1) Police, fire or other public safety officers are called to the
211 work site for any reason or are present at the work site for any
212 public safety related reason.
213

214 (2) Any person is treated or evacuated from the work site by
215 emergency medical services personnel.
216

217 (3) Any member of the public claims to have been injured at the
218 work site.
219

220 (4) The Contractor witnesses a member of the public being
221 involved in an accident at the worksite, or on account of conditions
222 related to the work, whether or not visible injuries occur.
223

224 (5) Any representative of a Federal, State, or County
225 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."

(XI) 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 into a body of water or water conveyance, the Contractor shall act immediately to bring the siltation, erosion, and pollution under control.

(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."

(XII) 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 installation and/or corrections and modifications to 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 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 cost to the State.

(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

318 affected utility owner, and the appropriate governmental authorities.
319 The Contractor shall cooperate with the affected utility owner, and the
320 appropriate governmental authorities in the restoration of service. If the
321 damage is to a known utility, the Contractor shall be responsible for all
322 costs associated with its repair and restoration of service, at no cost to
323 the State."
324

325 (XIV) Add the following:
326

327 **"107.25 Contaminated and/or Hazardous Item and/or Material;**
328 **Regulated Items and Material; Waste.**
329

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

342 **(B) Unknown Contaminated and/or Hazardous Items and/or**
343 **Material.** If the Contractor encounters or exposes any items, material or
344 other conditions within the worksite not previously known or suspected to
345 be contaminated or hazardous, but which exhibits properties which may
346 indicate the presence of hazardous or contaminated items and/or
347 material, the Contractor shall immediately notify the Engineer. Claims
348 by the Contractor for additional money or time arising from work involving
349 such items, material or other conditions, including the cost and time
350 associated with notifying and providing written reports to government
351 agencies listed below, shall be subject to the terms and conditions of
352 Subsection 104.08 – Differing Site Conditions.
353

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

363 **(D) Material and Waste Brought to the Worksite.** The Contractor
364 shall assume sole responsibility for
365

366 (1) The management of all regulated materials and items
367 brought to the worksite; and
368

369 (2) The management of all waste generated by or incidental to
370 the Contractor's operations, including but not limited to lubricants,
371 antifreeze, engine fluids, paints, and solvents.
372

373 Management of such materials and items includes, but is not
374 limited to, their transport, storage, handling, and disposal.
375

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

384 **107.26 Assignment or Change of Name.**
385

386 **(A) General.** The Contractor shall not sell, transfer, assign, or
387 otherwise dispose of this contract or any part hereof or any right, title, or
388 interest herein without the written consent of the Engineer.
389

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

399 **(B) Recognition of a Successor in Interest; Assignment.** When
400 in the best interest of the State, a successor in interest may be
401 recognized in an assignment agreement in which the Contractor and the
402 transferee and the State shall agree that:
403

404 (1) The transferee assumes all of the Contractor's obligation;
405

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

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

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

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

The Contractor shall defend, hold harmless, compensate, and indemnify the State, its employees and officers, against all losses, demands, claims, liabilities, suits, actions, causes of action, judgments, costs and expenses including attorneys' fees, and damages, arising out of injury to or death of any person (including employees of the State, the Contractor or any subcontractor), loss or damage to any property resulting from or in connection with performance of the work unless and until it is determined by a court of competent jurisdiction to have been 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 surety bond 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 Section 103D-317 HRS 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 four 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 representative of the State, the Comptroller of the State of Hawaii, the Attorney General, (the Federal granting agency, the Comptroller General of the United States, and any if their authorized representatives when federal funds are utilized), and the Legislative Auditor of the State of Hawaii shall have the right of access to any book, document, paper, file, or other record of the Contractor and any subcontractor that is related to the performance of work under this Agreement in order to conduct an audit or other examination and/or make copies, excerpts and transcripts for the purposes of monitoring and evaluating the Contractor and subcontractor's performance of work and the Contractor and subcontractor's program, management, and fiscal practices to assure the proper and effective expenditure of funds and to verify all costs associated with any claims made under this contract.

The Contractor shall provide full cooperation during all such audits 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 or its subcontractor's failure or refusal to fully cooperate.

The right of access 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 four 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 four year period, the Contractor and subcontractors shall retain and resolution of all issues that arise from it, or until the end of the four year retention period, whichever occurs later.

END OF SECTION