

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 Section 107.01 Insurance Requirements** from lines 5 to 81 to  
6       read as follows:

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

16  
17      The Certificate of Insurance shall contain: a clause that it is agreed  
18      that any insurance maintained by the State of Hawaii will apply in excess  
19      of, and not contribute with, insurance provided by this policy; and shall be  
20      accompanied by endorsement form CG2010 or equivalent naming the  
21      State as an additional insured to the policy which status shall be  
22      maintained for the full period of the contract until final acceptance of the  
23      work by State.

24  
25      The Contractor shall obtain all required insurance as part of the  
26      contract price. Where there is a requirement for the State of Hawaii and  
27      its officers and employees to be named as additional insureds under any  
28      Contractor’s insurance policy, before the State of Hawaii issues the Notice  
29      to Proceed, the Contractor shall obtain and submit to the Engineer a  
30      Certificate of Insurance and a written policy endorsement that confirms the  
31      State of Hawaii and its officers and employees are additional insureds for  
32      the specific State project number and project title under such insurance  
33      policies. The written policy endorsement must be issued by the insurance  
34      company insuring the Contractor for the specified policy type or by an  
35      agent of such insurance company who is vested with the authority to issue  
36      a written policy endorsement. The insurer’s agent shall also submit  
37      written confirmation of such authority to bind the insurer. Any delays in  
38      the issuance of the Notice to Proceed attributed to the failure to obtain the  
39      proof of the State of Hawaii and its officers and employees’ additional  
40      insured status shall be charged to the Contractor.

41  
42      A mere Certificate of Insurance issued by a broker who represents  
43      the Contractor (but not the Contractor’s insurer), or by any other party who  
44      is not authorized to contractually name the State as an additional insured  
45      under the Contractor’s insurance policy, is not sufficient to meet the  
46      Contractor’s insurance obligations.

47  
48           Certificates shall contain a provision that coverages being certified  
49 will not be cancelled or materially changed without giving the Engineer at  
50 least thirty (30) days prior written notice. Contractor will immediately  
51 provide written notice to the Director should any of the insurance policies  
52 evidenced on its Certificate of Insurance form be cancelled, reduced in  
53 scope or coverage, or not renewed upon expiration. Should any policy be  
54 canceled before final acceptance of the work by the State, and the  
55 Contractor fails to immediately procure replacement insurance as  
56 specified, the State, in addition to all other remedies it may have for such  
57 breach, reserves the right to procure such insurance and deduct the cost  
58 thereof from any money due or to become due to the Contractor.  
59

60           Nothing contained in these insurance requirements is to be  
61 construed as limiting the extent of Contractor's responsibility for payment  
62 of damages resulting from its operations under this contract, including the  
63 Contractor's obligation to pay liquidated damages, nor shall it affect the  
64 Contractor's separate and independent duty to defend, indemnify and hold  
65 the State harmless pursuant to other provisions of this contract. In no  
66 instance will the State's exercise of an option to occupy and use  
67 completed portions of the work relieve the Contractor of its obligation to  
68 maintain the required insurance until the date of final acceptance of the  
69 work.  
70

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

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

85 **(B) Types of Insurance.** Contractor shall purchase and maintain  
86 insurance described below which shall provide coverage against claims  
87 arising out of the Contractor's operations under the contract, whether such  
88 operations be by the Contractor itself or by any subcontractor or by  
89 anyone directly or indirectly employed by any of them or by anyone for  
90 whose acts any of them may be liable.  
91

92 (1) **Workers' Compensation.** The Contractor shall obtain  
93 worker's compensation insurance for all persons whom they  
94 employ in carrying out the work under this contract. This insurance  
95 shall be in strict conformity with the requirements of the most  
96 current and applicable State of Hawaii Worker's Compensation  
97 Insurance laws in effect on the date of the execution of this contract  
98 and as modified during the duration of the contract.  
99

100 (2) **Auto Liability.** The Contractor shall obtain Auto Liability  
101 Insurance covering all owned, non-owned and hired autos with a  
102 Combined single Limit of not less than \$1,000,000 per occurrence  
103 for bodily injury and property damage with the State of Hawaii  
104 named as additional insured. Refer to SPECIAL CONDITIONS for  
105 any additional requirements.  
106

107 (3) **General Liability.** The Contractor shall obtain General  
108 Liability insurance with a limit of not less than \$2,000,000 per  
109 occurrence and in the Aggregates for each of the following:  
110

- 111 (a) Products - Completed/Operations Aggregate,
- 112
- 113 (b) Personal & Advertising Injury, and
- 114
- 115 (c) Bodily Injury & Property Damage  
116

117 The General Liability insurance shall include the State as an  
118 Additional Insured. The required limit of insurance may be provided  
119 by a single policy or with a combination of primary and excess  
120 policies. Refer to SPECIAL CONDITIONS for any additional  
121 requirements.  
122

123 (4) **Builders Risk For All Work.** The Contractor shall take out  
124 a policy of builder's risk insurance for the full replacement value of  
125 the project work from a company licensed or otherwise authorized  
126 to do business in the State of Hawaii; naming the State as an  
127 additional insured under each policy; and covering all work, labor,  
128 and materials furnished by such Contractor and all its  
129 subcontractors against loss by fire, windstorm, tsunamis,  
130 earthquakes, lightning, explosion, other perils covered by the  
131 standard Extended Coverage Endorsement, vandalism, and  
132 malicious mischief. Refer to SPECIAL CONDITIONS for any  
133 additional requirements."  
134

135 (II) Amend 107.03 – Working Hours; Night Work, from line 140 to line 142  
136 to read as follows:  
137

138 **"107.03 Working Hours, Night Work.** All paving work including cold planing,  
139 pavement reconstruction, resurfacing and all other work requiring lane closures  
140 shall be done at night.

141  
142 Perform night work only as follows:

143 Sunday	9:00 P.M. – Midnight
144 Monday thru Thursday	Midnight – 5:00 A.M
145	9:00 P.M. – Midnight

146  
147  
148 Night time work shall not be allowed between the months of September 15  
149 to December 15.

150  
151 Do not work on Friday nights and Saturdays or as specified by the  
152 Engineer. Sunday's work will be part of Monday's working day.

153  
154 The Engineer will permit the Contractor to close one lane of the traffic  
155 during night time working hours."

156  
157 **(III) Add Section 107.18 Citizen and Residential Labor Force** after line 745  
158 to read as follows:

159  
160 **"107.18 Citizen and Residential Labor Force.**

161  
162 **(A) Citizen Labor.** No person shall be employed as a laborer or  
163 mechanic unless such person is a citizen of the United States or eligible to  
164 become one; provided that persons without such qualifications may be  
165 employed with the approval of the Governor until persons who are citizens  
166 and are competent for such services are available for hire.

167  
168 **(B) Residential Labor Force.** In accordance with Act 192; SLH 2011,  
169 no less than eighty (80) percent of the bidder's labor force working on the  
170 contract shall be provided by Hawaii residents. This act applies to all  
171 construction procurements under HRS Chapter 103D; however this act  
172 does not apply to procurements for professional services under Section  
173 103D-304 and small purchases under Section 103D-305. This act is also  
174 applicable to any subcontract of \$50,000.00 or more in connection with  
175 this contract.

176  
177 Resident means a person who is physically present in the State of  
178 Hawaii at the time the person claims to have established the person's  
179 domicile in the State of Hawaii and shows the person's intent is to make  
180 Hawaii the person's primary residence.

181  
182 **(C)** Percentage of workforce shall be determined by dividing the labor  
183 hours (including subcontractors) provided by residents working on the

184 project divided by the total number of hours worked by all employees of  
185 the contractor in the performance of the contract. Hours worked by  
186 employees within shortage trades as determined by the Department of  
187 Labor and Industrial Relations shall not be included in the calculation of  
188 this percentage.

189  
190 (D) Certification of compliance with the forgoing provisions shall be  
191 made by the contractor in the form of a written oath submitted to the  
192 Procurement Officer on a monthly basis for the duration of the contract.

193  
194 (E) Sanctions for non compliance with these provisions are as follows:

195  
196 (1) With respect to the General Contractor, withholding of  
197 payment on the contract until the Contractor or its Subcontractor  
198 complies with HRS Chapter 103B as amended by Act 192, SLH  
199 2011.

200  
201 (2) Proceedings for debarment or suspension of the Contractor  
202 or Subcontractor under Hawaii Revised Statutes § 103D-702.

203  
204 This Section shall not apply when its application will disqualify the State  
205 from receiving federal funds or aid."

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207  
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211  
212  
213 **END OF SECTION 107**