

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.01 Laws to be Observed. The Contractor shall observe and comply with Federal, State and County laws, ordinances, rules and regulations. Also, the Contractor shall comply with orders and decrees of government bodies or tribunals having jurisdiction or authority over the work. Reference to laws, ordinances, rules and regulations includes amendments.

The Contractor shall hold harmless, compensate, defend and where appropriate, insure the State and its officers, agents and employees against claim or liability based on the violation of laws, ordinances, rules and regulations, orders or decrees, whether committing such violation by the Contractor or its subcontractor. The Contractor shall report to the Engineer discrepancy or inconsistency in the contract in relation to laws, ordinances, rules and regulations, orders or decrees in writing.

The Contractor shall observe the following:

- (1) Hawaii Employment Relations Act, Chapter 377, H.R.S.
- (2) Hawaii Employment Security Law, Chapter 383 H.R.S.
- (3) Wage and Hour Law, Chapter 387, H.R.S.
- (4) Payment of Wages, Chapter 388, H.R.S.
- (5) Workmen's Compensation Law, Chapter 386, H.R.S.
- (6) Occupational Safety and Health, Chapter 396, H.R.S.

107.02 Wages and Hours Requirements. The Contractor shall observe and comply with Chapter 104, H.R.S. relating to wages and hours of employees on public works including the following:

--(A) **Hours of Labor.** Workers shall receive compensation at a rate of not less than one and a half (1-1/2) times the worker's basic hourly rate if the worker works:

- (1) over eight (8) hours in one day;
- (2) over forty (40) hours in one week; or
- (3) on Saturdays, Sundays or legal State holidays.

For Federal-Aid projects, the Contractor shall apply such wage rate schedule consistent with Federal law, statutes or regulations.

The Contractor shall compute such overtime compensation daily or weekly, whichever method of computation yields the greater amount of overtime compensation. The Contractor is not required to pay both daily and weekly overtime compensation of the same hours worked.

The Contractor shall obtain written consent from the Engineer for work over the normal eight (8) working hours per day or at nights. For emergency, verbal consent from the Engineer will be sufficient.

The Department will not consider hours worked over the normal eight (8) working hours per day or night as part of a normal working day. Also, the Department will not consider hours worked on Saturdays, Sundays or legal holidays as part of a normal working day.

The Engineer reserves the right to cancel the overtime, night, Saturday, Sunday or legal holiday work if the Engineer feels such work is not necessary or when such work is not detrimental to the progress of the work.

(B) Rate of Wages. The Contractor shall pay the workers at least the wages established by the State Department of Labor and Industrial Relations (DLIR) or more. Also, the Contractor shall use the most current minimum wages for workers as determined by DLIR throughout the life time of the contract. For Federal-Aid projects, the Contractor shall apply such wage rate schedule if consistent with Federal law, statutes or regulations.

For bidding purposes, the Contractor shall apply the wage rate schedule established by DLIR five (5) calendar days before the date of bid opening. The Contractor shall not apply changes made less than five (5) calendar days before the bid opening date. For Federal-Aid projects, the Contractor shall apply such wage rate schedule if consistent with Federal law, statutes or regulations.

The Contractor shall obtain said wage rate schedule from the respective office. The Department will include the current State wage rate schedule physically in the contract documents executed by the successful bidder.

The United States Department of Labor and the DLIR have established minimum wage rate schedules for workers. The Contractor shall not pay the workers less than the wages set forth on the applicable schedules.

The Department will classify flaggers who do traffic safety duties and do no actual construction work on the project as laborers or mechanics within the meaning of the Davis Bacon Act.

On Federal-Aid projects, the Contractor shall apply both wage rate schedules. The higher rates shall prevail. On other projects, the Contractor shall apply the wage rate schedule established by DLIR.

The Contractor shall post the schedule of prevailing rates of minimum wages applicable to the work in a prominent and easily accessible place at the project site. The Contractor shall give each worker, at the time of employment and employed under this contract, a copy of the current posted rates of wages.

(C) **Payment of Wages Conceded to be Due.** The Contractor and its subcontractors, if any, shall pay the workers not less than once a week. The Contractor and its subcontractors, if any, shall not deduct or rebate on accounts except by law, the full amounts of their wages including overtime at wage rates equal or more than those stated in the contract. The Contractor and its subcontractors, if any, shall pay the workers despite contractual relationship that may exist between the Contractor or its subcontractors and such workers. The Contractor and its subcontractors, if any, shall accrue overtime to not more than five (5) working days before the time of payment.

(D) **Withholding of Wages.** The Department may withhold from the Contractor until the workers acquire payment. The payment shall be the difference between the wages required by the contract and the wages received and not refunded by such workers. The Department may withhold an additional amount as liquidated damages according to H.R.S. 104-5(d).

(E) **Payrolls and Payroll Records.** The Contractor and its subcontractors, if any, shall submit certified copies of each weekly payroll to the Engineer within seven (7) calendar days after the end of each weekly payroll period. The Contractor shall be responsible for the submission of certified copies of the payrolls of its subcontractors involved with the project. The certification affirms:

- (1) that the payrolls are correct and complete,
- (2) that the wage rates contained therein are equal or more than the current wage rates established by DLIR, and
- (3) that the classifications set forth for each worker conform with the work each worker did.

The Contractor and its subcontractors, if any, shall maintain the payroll records for three (3) years from the date of final payment. Such records shall contain the name and address of each employee, the classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor and its subcontractors, if any, shall make such records available for inspection by the Department. Also, they may interview workers on the project site during working hours.

(F) **Failure to Pay Required Wages or to Submit Payroll Records.** If the Department finds that

- (1) workers employed on the project site has wages at a rate less than the required rate by the contract, or
- (2) workers has not received the proper overtime compensation, or
- (3) the Contractor is tardy in submitting the payroll and other records requested by the State,

107.02

the Department may, in writing, end the right of the Contractor or its subcontractors to proceed with the work due to the above. The Department may complete such work by contract or otherwise. The Contractor and its sureties shall be liable for costs to complete such work. *|
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107.03 Worker's Compensation Act. The Contractor shall insure workers employed under this contract from and against personal injury by accident. *|
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107.04 Citizen Labor. The Contractor shall not employ a person as a worker unless such person is a citizen of the United States or eligible to become one. The Contractor may employ that persons with the approval of the Governor until the Contractor can hire that person competent for such services. This provision is not applicable on Federal-aid projects. *|
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107.05 Labor Discrimination. The Contractor is directed to Chapter 378, H.R.S. which makes unlawful certain discriminatory practices with respect to employment. *|
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107.06 Federal Nondiscrimination and Affirmative Action Requirements. During the performance of the contract, the Contractor agrees to Form FHWA-1273 "Required Contract Provisions, Federal-aid Construction Contracts" and "Specific Equal Employment Opportunity Responsibilities". *|
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On Federal-aid contracts, the Contractor shall: *|

(1) Post the required Federal notice at the main office, shop areas, and at the project before the start of work. The Engineer will provide copies of this notice; *|
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(2) Accept the equal employment policy specified in the contract and post this policy with the name and phone number of its Equal Employment Opportunity Officer in the main office, shop areas, and at the project before the start of work; *|

(3) Fulfill equal employment and affirmative action requirements listed in the contract and document equal employment opportunity and affirmative action activities; *|
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(4) Develop and update, at least annually, a written affirmative action plan that contains a utilization analysis of total current employment. The Contractor shall relate this analysis to major job classifications with explanations if underutilizing disadvantaged people in the job classifications. Also, the affirmative action plan shall include an analysis of areas within which the Contractor is deficient in the utilization of disadvantaged people. Direct goals and timetables of its good faith efforts to increase the utilization of disadvantaged people at levels and in segments of its work force where deficiencies exist; *|
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(5) Provide training opportunities for disadvantaged people; |

(6) Physically include these provisions and the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" in each subcontract whenever the Contractor or subcontractors subcontract a portion of the project work over ten thousand (\$10,000) dollars; *

(7) Document its efforts to use minority suppliers, subcontractors, and lessors; *

(8) Use its efforts to assure equal employment opportunity, affirmative action, and Title VI compliances from subcontractors, material suppliers, and lessors; *

(9) Require subcontractors with contracts of ten thousand dollars (\$10,000) or more to comply with paragraphs (1), (2), and (3), of this subsection; *

(10) Require subcontractors, material suppliers and equipment lessors with contracts or agreements of fifty thousand dollars (\$50,000) more and fifty (50) or more employees to comply with paragraphs (4) and (5) of this subsection; and *

(11) Ensure and maintain a working environment free of harassment, intimidation, and coercion at sites, and in facilities where assigning its employees to work. The Contractor, where possible, shall assign two (2) or more women to each construction project. Ensure that foremen, superintendents, and other on-site supervisory personnel are aware of and carry out its obligations to maintain such a working environment. *

107.07 Contractor's Licensing Laws. The Contractor is directed to Chapter 444, H.R.S.. *

The State will license bidders and Contractors according to laws of the State. The State will subject bidders or Contractors not so licensed to the penalties imposed by such laws. *

-For Federal-Aid projects, prospective bidders do not require license to submit a bid or have such a bid considered in the award of the contract. Such prospective bidder shall become properly licensed between the time of bid opening and the time the prospective bidder executes the contract. If the prospective bidder is not properly licensed as stated above, the Department may disqualify such bidder and award the contract to the next lowest qualified bidder or place the project out to rebid. *

107.08 Permits, Licenses and Taxes. The Contractor shall procure permits and licenses, pay charges, fees, and taxes, and give notices necessary and incidental to the due and lawful prosecution of the work. *

107.09 Patented Devices, Materials and Processes. If the Contractor uses designs, devices, materials, or processes covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and its surety shall hold harmless, compensate, defend and where appropriate, insure the State and *

political subdivisions of the State and affected third party, or from and *
against claims, demands, liabilities actions and judgements for infringement *
for using such patented designs, devices, materials or processes, or trademark *
or copyright, and shall compensate the State for costs, expenses, and damages *
that the State may be obliged to pay for infringements by the Contractor or *
its subcontractors during the prosecution or after the completion of the work. *

107.10 Conflicts of Interest. No official or employee of the Department shall *
have financial or personal interest in such contracts. No person doing *
services for the Department shall have financial or personal interest. No *
official, employee or such person performing services for the Department shall *
have financial or personal interest in real property obtained for the project *
unless disclosed openly

(1) by such official, employee or such person performing services for *
the Department or

(2) upon the public records of the State and official, employee or *
person has not participated in such acquisition for the State. *

A violation to this subsection shall void the contract or agreement in *
which such official or employee of the Department or person doing services for *
the Department participated in such contract. Participation includes *
negotiating, accepting, or approving the project contract. The Contractor *
shall not make claims for loss or damage against the Department or the Federal *
Government. *

107.11 Federal Aid Provisions. The Contractor shall observe Federal laws, *
rules and regulations when the Federal Government participates in the cost of *
a project. *

The Contractor shall expose the work to the inspection of the appropriate *
Federal agency. Such inspection shall not make the Federal Government a party *
to this contract. *

107.12 Sanitary, Health and Safety Provisions. The Contractor shall provide *
and maintain sanitary, health and safety provisions for its employees *
according to the Department and local Boards of Health. *

The Contractor is directed to the Federal, State and County laws, *
regulations, and rules concerning construction safety and health standards. *
The Contractor shall not require workers to work in conditions that are *
unsanitary, hazardous or dangerous to the employee's health or safety. *

107.13 Public Convenience and Safety. The Contractor shall conduct its work *
to assure the least possible obstruction to traffic. The Contractor shall *
provide for the safety and convenience of the public and the protection of *
people and property according to Subsection 104.04 - Maintenance of Traffic. *

The Contractor shall submit traffic maintenance plans and schedules in writing for review and acceptance at least ten (10) working days before such work begins. The Contractor shall include traffic detours, road or lane closures, lane switches and the placement of temporary traffic control devices, warning signs and barricades.

Such plans and schedules shall contain:

- (1) a brief description of the work,
- (2) dates of work,
- (3) times of day affected,
- (4) proposed public information sign, and
- (5) proposed news release.

If doing work in a city or town, the Contractor shall give the Fire Department at least twenty-four (24) hours notice in writing before blocking or closing off access to streets. The Contractor shall keep fire hydrants accessible to the Fire Department. The Contractor shall not place material or other obstruction closer to a fire hydrant than permitted by ordinances, rules or regulations. If there are no ordinances, rules or regulations, the Contractor shall not place material or other obstruction within five (5) feet of a fire hydrant.

The Contractor shall sprinkle the roadway with water if its operations are causing dust on the highway, local road, or haul road to the highway.

The Contractor shall make arrangements according to the contract for emergency work that may be required when work is not in progress.

The Contractor shall not work during the following peak hours when the work-involves traffic lane closures or slowdown of traffic:

Morning peak hours 6:00 A.M. to 8:00 A.M.

Afternoon peak hours 3:30 P.M. to 6:00 P.M.

Exceptions to the above peak hours shall require the acceptance of the Engineer.

The Engineer will permit the Contractor to close only one (1) lane of traffic during its working hours. The Contractor shall keep the lanes open to traffic and allow to flow at normal posted speed limit during the peak hours and its non-working hours.

Failure of the Contractor to open lanes to traffic during the above peak hours shall result in assessment of liquidated damages as specified in Section 108.08.

The Contractor shall notify in writing the State and County transportation agencies including Bus Systems Division, Police Department, Fire Department, Ambulance Service, and the Department of Health at least five (5) days before the start of construction.

The Contractor shall construct, install, maintain, and remove two (2) advisory signs as ordered by the Engineer. The Contractor shall place the signs within the project limits. The signs shall have black letters and edging on orange background. The minimum size of the signs shall be four (4) feet high by eight (8) feet wide.

The sign message shall include the starting date, hours, limits and duration of construction. The height of the letters shall be eight (8) inches, Series D. If accepted by the Engineer, the Contractor may use a minimum height of six (6) inches, Series D. The Engineer will review and accept the advisory sign wording before installing. The Contractor shall install the advisory sign two (2) weeks before the start of construction.

Also, the Contractor shall provide and insure safe passage for pedestrians traveling in or near the construction zone.

The Department will consider payment for furnishing, placing, maintaining and removing the advisory signs and providing and insuring safe passage for pedestrians incidental to the various contract items. The Department will pay additional advisory signs as ordered by the Engineer under Police Officers and Additional Traffic Control Devices.

The Contractor shall submit requests for review and acceptance of detours and lane closures that will impact traffic during peak hours before the scheduling the work to begin as follows:

- (1) detours - 8 weeks, and
- (2) lane closures - 6 weeks.

Also, these requests shall include:

- (1) An explanation of proposed changes to the existing traffic pattern;
- (2) A schedule of when installing informational and traffic control signs;
- (3) A schedule of when publishing legal notices;
- (4) A plan showing the proposed informational and traffic control signs; and
- (5) A plan showing the lane changes or detours. Plans for multi-lane highway lane changes and detours shall include details of the beginning of the lane changes or detours.

The Department will not make payment for reviewing request submittals. |

The Contractor shall place a legal notice in the newspaper for the |
following traffic pattern changes in operation during peak hours or night |
work: |

- (1) Detours; |
- (2) Lane closure; |
- (3) Permanent road closure: and |
- (4) Permanent new route that changes a previous route. |

The advertisement shall contain the following information: |

- (1) Map of traffic pattern change limits; |
- (2) Map showing lane(s) closure and detour pattern; |
- (3) Notice of starting and ending dates and duration; and |
- (4) Explanation of the lane(s) closure or detours "Notice To Motorist". * |

The quality of the map shall be as follows: |

- (1) The Department will not allow free hand printing or pencil; * |
- (2) The Contractor shall highlight important feature in bold letters by * |
darkening, cross-hatching, crossing-out or coloring; |
- (3) Minimum size shall be five (5) columns wide and four (4) columns |
deep; |
- (4) Text specifications. |
 - (a) Work being featured - 3/16 inch text |
 - (b) Major roads and features - 1/8 inch text |
 - (c) Other roads and features- first letter upper case |
 - (d) "Notice to Motorists" in upper case |
 - (e) Message - first letter upper case |
- (5) Line Thickness. |
 - (a) Important feature being advertised - thicker than rest of map |

107.13

(b) Directional arrow - bolder than the rest of the lines shown on the map, when important, to show the route traffic should use

(6) The Contractor shall show reference direction such as "TO HONOLULU" with arrow.

The Contractor shall place Legal Notices for three (3) consecutive days and within one (1) week before the traffic pattern changes in the Honolulu Advertiser and Honolulu Star-Bulletin as follows:

(1) The Contractor shall submit "Notice to Motorists" for review and acceptance before placement in the newspaper six (6) weeks before the start of work.

(2) Legal notices generally shall be at least five (5) columns wide. Lesser width columns may be considered to balance against the size of the drawing. The Contractor shall submit the actual size of the notice to be published in the newspaper for review and acceptance. The Engineer will not allow reduction of the notices once accepted.

(3) The final "Notice to Motorists" submittal shall be a good copy of the camera ready legal notice.

The Contractor is directed to Section 645 for payment of Legal Notices.

107.14 Barricades and Warning Signs. The Contractor shall provide, erect, and maintain:

(1) necessary barricades,

(2) suitable and sufficient lighting devices, signs and other traffic control devices, and

(3) precautions for the protection of the work and safety of the public.

The Contractor shall protect roadways closed to traffic, illuminate obstructions during hours of darkness, and provide warning signs to control and direct traffic according to the contract. *| *| *

The Contractor shall put up warning signs: *|

(1) ahead of the place where operations may interfere with the use of the road by traffic, and *| *

(2) at intermediate points where the new work crosses or coincides with an existing road. *| *

The Contractor shall construct and place such warning signs as ordered and accepted by the Engineer. *| *

The protective devices including barricades, warning signs, lights, and temporary signals shall conform to "The Hawaii Administrative Rules, Title 19, Subtitle 5, Chapters 127, 128 and 129", the MUTCD and Section 104 - Scope *| *| *

of Work. Reflectorization for protective devices such as barricades, *
 delineators, and warning signs, shall conform to Subsection 712.20 - Signs. *

The Contractor shall not use steel drums and barrels for traffic |
 controls in construction and maintenance work zones. |

107.15 Use of Explosives or Combustibles. When the use of explosives or *
 combustibles is necessary, the Contractor shall exercise the utmost care not *
 to endanger life or property, including new work. The Contractor shall be *
 responsible for damages and injuries resulting from the use of explosives or |
 combustibles. |

The storage and use of explosives or combustibles shall be according to
 Sections 376-21 to 376-34, H.R.S., and Sections 133-1 to 133-6, H.R.S.

The Contractor shall notify each public utility company working near the *
 work site in writing of its intentions to use explosives. The Contractor *
 shall give ten (10) working days notice. *

107.16 Protection and Restoration of Property and Landscape. The Contractor
 shall be responsible for damages or injury to property resulting from act, |
 omission, neglect, or misconduct in executing the work or in defective |
 materials. |

If damage or injury occurs to property resulting from act, omission, *
 neglect, or misconduct in executing the work or in defective materials, the *
 Contractor shall repair, rebuild and restore to a condition before such *
 damage or injury occurred at no cost to the State. *

**107.17 Protection of Rivers, Streams, Impoundments, Forests and
 Archeological, Historical, and Burial Site Findings.** |

(A) Erosion and Siltation Control. The Contractor shall exercise
 precaution to prevent silting of rivers, streams, lakes, and reservoirs. *

The Contractor shall provide temporary erosion control before or *
 during suspension of contract performance. The Contractor shall continue *
 such measures until constructing permanent drainage or other facilities. *
 Also, the Contractor shall continue such measures until establishing *
 the protective ground cover sufficiently to be an effective erosion *
 deterrent. If material begins to erode into a river, stream or *
 impoundment, the Contractor shall act immediately to bring the siltation *
 under control. *

The Contractor shall restrict construction operations in rivers, *
 streams, lakes and reservoirs where channel changes are shown in the *
 contract. Also, the Contractor shall restrict construction operations to *
 those areas that are entered for the construction of temporary or *
 permanent structures. The Contractor shall clear rivers, streams, lakes *
 and reservoirs promptly of falsework, piling, debris, or other *
 obstructions. *

The Contractor shall not deposit excavated material in or near rivers, streams, lakes and reservoirs. *

The Contractor shall not permit fording of streams with construction equipment. The Contractor shall use temporary bridges or other structures wherever stream crossings are necessary. The Contractor shall not operate mechanized equipment in streams except to construct channel changes and temporary or permanent structures. The Contractor shall avoid or minimize interferences with the movement of migratory fish. *

(B) Pollution. The Contractor shall exercise precaution to prevent pollution of rivers, streams, lakes and reservoirs. The Contractor shall not discharge pollutants including chemicals, lubricants, fuels, bitumens, and raw sewage into or next to rivers, streams, lakes and reservoirs or into channels leading thereto. Also, the Contractor shall comply to the Department of Land and Natural Resources (DLNR), Federal, State and County Laws, statutes, ordinance, rules and regulations relating to the prevention and abatement of pollution. *

The Contractor shall regulate operations near harbors, bays, swimming and water recreation areas, underwater game preserves, and other ocean side areas to avoid and minimize pollution. The Contractor shall comply according to United States Department of Interior, State Department of Health and other government agencies having jurisdiction in this area. *

(C) Forest Protection. The Contractor shall conform to Federal, State and County laws, statutes, ordinances, rules and regulations, including: *

(1) the local Fire Department and *

(2) DLNR governing the protection of forests and the performance of work in forest areas. *

The Contractor shall: *

(1) keep the areas in an orderly condition; *

(2) dispose refuse; *

(3) obtain permits for the construction and maintenance of construction camps, stores, warehouses, residences, latrines, septic tanks and cesspools according to the State Forester requirements. *

The Contractor shall take precaution and assist in preventing and suppressing forest fires. The Contractor shall notify a Forest official of the location and amount of fire. *

The Contractor shall avoid or minimize disturbance to game preserves, water sheds and operations of the State Forester.

(D) **Archaeological, Historical, and Burial Site Findings.** Whenever the Contractor encounters possible archaeological, historical or burial site findings, the Contractor shall immediately suspend the operation and inform the Engineer verbally and follow up with a written letter. The Engineer will contact the Department of Land and Natural Resources (DLNR) and other agencies to evaluate such findings and decide the course of action.

The Contractor shall not resume operations suspended without the prior written acceptance of the Engineer. The Contractor shall not count delays resulting from the discovery, investigation, and handling of such findings against the completion date. The Engineer will govern suspensions of work according to Subsection 108.06 -Temporary Suspension of Work. Also, the Contractor shall conform to Chapter 6E, H.R.S..

Failure or refusal to comply with the terms of this Section or Chapter 6E, Hawaii Revised Statutes, may subject the Contractor to the penalties described in Section 6E-11, Hawaii Revised Statutes,:

- (1) a fine of not more than ten thousand (\$10,000) dollars for each separate offense,
- (2) seizure and disposition of equipment, and
- (3) if the Contractor knowingly fails or refuses to comply, a prohibition from participating in the construction of State or county projects for ten (10) years.

Construction work and equipment shall remain within the right-of-way limits of this project.

The Archaeologist will decide the limits of the site. Also, the Archaeologist will decide, with the Engineer, the best means for protecting the site from further disturbances which requires further investigation or salvage as determined by the SHPO. Protection may include barricades, roping off, temporary fencing or other means.

The Contractor shall provide the protective measures, as ordered by the Engineer. The Engineer will make payment for items of work that have contract prices under the applicable contract prices. The Engineer will create a contract change order if the proposal does not contain an item for 'Protective Measures for Archaeological, Historic, and Burial Site Findings' with a Force Account allowance to cover the costs of items not covered by contract unit prices. Also, the Engineer will pay for removal of the protective measures on a Force Account basis. The Engineer will apply the Force Account allowance to removal of protective measures provided under this subsection. The State will bear costs for the investigations or salvage.

(E) **Borrow Pit.** After the Contractor removes the necessary quantity of materials, the Contractor shall trim and shape the borrow pit to blend into the general topography of the area. The Contractor shall give special attention to the effect of its operations upon the landscape. The Contractor shall take special care to maintain and not damage the natural surroundings and prevent erosion. The Contractor shall avoid steep slopes and sheer faces. The Contractor shall seed and mulch disturbed areas according to Section 618 - Grassed Surfaces at no cost to the State. These shaping and seeding requirements do not apply to commercial pits.

107.18 Responsibility for Damage Claims, Nonliability to Third Parties for Claims Based on Breach of Contract Provisions. The Contractor shall hold harmless, compensate, defend and where appropriate, insure the State, its officers and employees, from demands, claims, liabilities, suits, actions, causes of action, judgements, costs and expenses for damages, injury, loss or death, including claims for damage to property and economic loss, whenever such damage, injury, loss or death arises from its project operations or performance under the contract, including, its:

- (1) failure to protect adequately the project work;
- (2) use of unacceptable materials in constructing or doing the work;
- (3) actions, omissions, negligence or misconduct relating to this project;
- (4) liability for claims for infringements of patent, trademark, or copyright; and
- (5) liability for claims arising under the "Worker's Compensation Act", or other laws, ordinances, orders, or decrees.

The State may retain and withhold money to cover its obligations. If no money is due, its surety may be held until discharging and releasing its obligations and furnishing evidence to the Department. The State will not withhold money due the Contractor when the Contractor produces evidence that the Contractor is adequately protected by public liability and property damage insurance.

The intent of the parties to this contract is not to make the public or members a third party beneficiary. Also, the intent is not to authorize anyone not a party hereto to maintain a suit for personal injuries or property damage based on a contract theory of liability.

107.19 Opening Sections of Project to Traffic. Opening sections to traffic before completion of the entire contract may be desirable from a traffic service standpoint. Also, opening sections to traffic may be necessary due to conditions or events unforeseen at the time of the contract. The Contractor shall make such openings when so ordered by the Engineer. Under no condition shall such openings constitute acceptance of the work or a waiver of the contract. The Contractor shall govern acceptance of work by Subsection 105.17 - Acceptance.

The contract will designate sections to open before completion of the contract. The Department will compensate the Contractor for maintenance cost on sections opened to traffic according to Subsection 109.04 - Extra and Force Account Work. *

If the Contractor is tardy in completing features of the work, the Engineer may notify the Contractor in writing and establish a time to complete the work. If the Contractor is tardy or fails to make an effort toward completing features of the work in that established time, the Engineer may order all or a portion of the project opened to traffic. The Contractor shall conduct the remainder of the construction operations to cause the least obstruction to traffic. Also, the Department will not pay added compensations due to the added cost of the work of opening such section to traffic. *

The Contractor shall repair damages to the highway not attributable to traffic that occurs on such section (except landslides) on sections opened to traffic under the above conditions at no cost to the State. The Contractor shall remove the slide material and repair and restore the roadway on a basis agreed to before the commencement of that work. *

107.20 Contractor's Responsibility for Work. Until the Engineer gives final written acceptance of the project, the Contractor shall have the charge and care of the project. Also, the Contractor shall take precautions against injury or damage to parts of the project by the action of the elements. The Contractor shall rebuild, repair, restore, and make good damages to portions of the work before final acceptance. The Contractor shall bear expenses except damage to the work due to unforeseeable causes beyond the control of the Contractor. This includes acts of God such as earthquake, seismic waves, tornado, or hurricane; the public enemy; or governmental authorities. *

If there is suspension of work, the Contractor shall be responsible for the project and shall take such precautions to prevent damage to the project. If ordered by the Engineer, the Contractor shall provide drainage and erect temporary signs, structures, or other facilities at no cost the State. Also, the Contractor shall maintain newly established plantings, seedings, and soddings furnished under this contract and according to the contract. *

107.21 Contractor's Responsibility for Utility Property and Services. Where its operations are next to properties of utility companies or to other property, the Contractor shall not start work until the Contractor makes arrangements necessary for the protection of the property. *

The Contractor shall cooperate with the owners of underground or overhead utility lines in removing such lines in order for the work to progress according to the contract. Cooperation includes rearranging its operation, reducing of rearrangement work, and rendering uninterrupted services to the owners of that line. *

The Contractor shall contact the owners of the various utility companies before the start of the work. The Contractor shall furnish the Engineer with evidence that the Contractor has contacted the utility companies. *

If the Contractor discovers in the contract plans that the existence and location of utilities are not correct, the Contractor shall not disturb the utilities and immediately notify the Engineer. The Engineer will advise the Contractor regarding actions to take.

The Contractor shall ascertain the exact location and depth of utilities within the project area. The Contractor shall mark such locations to warn workers or equipment operators of their existence and location. The Contractor shall be responsible to acquaint personnel working near utilities with the type, size location, depth of the utilities and the consequences that might result from disturbances. The Contractor shall not start trenching or start similar operation until the Contractor takes every possible precaution to protect the utilities.

When its operations result in damages to utility line, service connection or other utility facility, the Contractor shall be responsible for such damage. Also, the Contractor shall repair such damage at no cost to the State.

If there is interruption to water or utility services, the Contractor shall promptly notify the Engineer and the proper authorities. The Contractor shall cooperate with the authorities in the restoration of service.

If the Contractor interrupts the water service, the Contractor shall continue the repair work until the Contractor restores service. The Contractor shall not undertake work around fire hydrants until the local fire authority and the Board of Water Supply accepts the provisions for continued service.

The Contractor may relocate or adjust the utility lines or service connections for its convenience. The Contractor shall make the necessary arrangements and acceptance from the Engineer and the utility company. The Contractor shall connect such relocation or adjustment at no cost to the State.

The Contractor shall use special care to prevent damage to the pipes, cables, and other underground utility facilities. The Contractor shall repair damages done to the pipes, cables, and other underground utility facilities at no cost to the State.

(A) Notes for Board of Water Supply (BWS) Facilities.

(1) Materials and construction of water system facilities and appurtenances shall be according to:

(a) these Specifications as amended by the State and

(b) BWS's latest "Water System Standards", Volume 1 and the latest "Approved Material List and Standard Details For Water System Construction", Volume 2.

(2) The Contractor shall notify BWS in writing one (1) week before commencing work on the water system.

(3) The Contractor shall base plans accepted by BWS solely on the adequacy of the water supply. Other features of the water system, such as lines, grades, fittings, drainage and other features of improvements shall not be the responsibility of BWS.

(4) The existence and location of underground utilities and structures as shown on the plans are from the latest available data but is not guaranteed as to the accuracy or the encountering of other obstacles during the course of the work. The Contractor shall be responsible and pay for damages to existing utilities.

(5) The Contractor shall submit for acceptance to BWS, the manufacturer's certification that cast iron (gray or ductile) fittings for the project conform to the latest "Water System Standards" before installation.

(6) The Contractor shall notify the BWS Field Operations Division (527-6162) one (1) week before repaving operations.

(B) Notes for Hawaiian Electric Company (HECO) Facilities.

(1) The existence and location of HECO's overhead and underground facilities shown on the plans are from existing records with varying degrees of accuracy and are not guaranteed as shown. The Contractor shall exercise extreme caution whenever construction crosses or is in close proximity of underground lines and shall maintain adequate clearance when operating equipment within or under overhead lines.

(2) The Contractor shall comply with the State of Hawaii's Occupational Safety and Health Law (DOSHS).

(3) The Contractor shall be liable for damages to HECO's facilities. The Contractor shall immediately report such damages to HECO's Trouble Dispatcher (548-7874).

(4) Work to be done on HECO facilities shall be under the direct supervision of a HECO's inspector.

(5) The Contractor shall obtain an excavation permit from HECO's Mapping and Records Division located at 820 Ward Avenue, 4th Floor, two (2) weeks before starting construction.

(6) The Contractor shall call HECO's Underground Division (543-7345) a minimum of seventy-two (72) hours in advance for verification of underground lines or for assistance in supporting and protecting these lines.

(7) HECO shall do work required to relocate HECO facilities. The Contractor shall be responsible for coordination and for costs if applicable.

(C) Notes for Hawaiian Telephone Company (HTCO) and Signal Corps (SC) Facilities.

(1) The location of existing HTCO and SC underground facilities are approximate only. The Contractor shall verify the location and depth of these facilities. The Contractor shall repair damages to the underground facilities as a result of its operations at no cost to the State and paid for by the Contractor.

(2) The Contractor shall obtain prior written clearance from HTCO at least five (5) working days before starting excavation.

(3) The Contractor shall notify HTCO (834-6214) seventy-two (72) hours before the start of excavation for field location of HTCO and Signal Corps underground facilities.

(D) Notes for Wastewater Management (DWM) Facilities.

(1) The Contractor shall construct according to the City's latest "STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION", the latest "STANDARD DETAILS FOR PUBLIC WORKS CONSTRUCTION", and the latest "REVISED ORDINANCES OF HONOLULU".

(2) The Contractor shall notify DWM seven (7) days before the commencement of sewer work. The Contractor shall submit four (4) sets of accepted construction plans.

(3) Location of existing sewer appurtenances shown on the plans are approximate only. The Contractor shall verify the exact location in the field.

(E) Notes for Gasco, Inc. Facilities.

(1) The Gasco, Inc. gas pipelines in the project area are plastic coated and cathodically protected. The Contractor shall be extremely careful when working near these gas pipelines.

(2) The Contractor shall obtain prior written clearance from Gasco, Inc. at least five (5) working days before starting excavation near these gas pipelines.

The Contractor shall call Gasco, Inc. a minimum of forty-eight (48) hours before starting excavation to arrange for field location of the existing gas pipelines after obtaining written clearance. The telephone number is 547-3575 during business hours and 526-0066 after hours.

The Contractor shall excavate and backfill around gas pipelines in the presence of a Gasco, Inc. representative. The backfill material within six (6) inches of the gas pipeline shall be select cushion material accepted by Gasco, Inc.

(3) The Contractor shall notify Gasco, Inc. five (5) working days before starting work for relocation of gas pipeline. The Contractor shall provide the necessary excavation and backfill, arrange for traffic permits, and restore pavement, sidewalks, or other facilities. Gasco, Inc. shall relocate the gas facilities.

(4) The Contractor shall notify Gasco, Inc. immediately after damages occurs to existing gas pipelines, coatings, or its cathodic protection devices. Gasco, Inc. shall repair such damage work on at no cost to the State and paid by the Contractor.

(5) Minimum vertical and horizontal clearance between the gas pipelines, conduits, ductlines, or other facilities shall be twelve (12) inches. The Contractor shall provide adequate support and protection for gas pipelines exposed in the trench and accepted by Gasco, Inc.

(6) The Contractor shall work in an expeditious manner to keep the uncovered gas pipelines exposed for a short period of time as possible.

107.22 Furnishing Right-Of-Way. The Department will be responsible for securing necessary rights-of-way. Exceptions will be shown in the contract.

107.23 Personal Liability of Public Officials. The Director, Engineer, or their authorized representatives, either personally or as officials of the State, shall not be liable in carrying out the contract, or in exercising power or authority granted by or within the scope of the contract. The Director, Engineer, or their authorized representatives shall be understood to act solely as agents and representatives of the State.

107.24 No Waiver of Legal Rights. Upon completion of the work, the Engineer will expeditiously make final inspection and notify the Contractor of the results of the inspection. Such final acceptance shall not prevent the Engineer from correcting measurement, estimate, or certificate made before or after completion of the work nor recovering from the Contractor or its surety, or both, overpayments made by the State to damages, costs, expenses and liabilities incurred by or assessed against the State arising out of or related to, its failure to fulfill its obligations under the contract. The Contractor shall not assume or interpret the final acceptance as a waiver of rights of the State with respect to breach of contract including subsequent breach of the contract by the Contractor.

The Contractor shall be accountable for and fully compensate the Department for latent defects, fraud, constructive fraud (such gross mistakes as may amount to fraud), and breach or violation of warranty or guaranty.