

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 State
21 as an additional insured to the policy which status shall be maintained for
22 the full period of the contract until final acceptance of the work by State.
23

24 The Contractor shall obtain all required insurance as part of the
25 contract price. Where there is a requirement for the State of Hawaii and its
26 officers and employees to be named as additional insureds under any
27 Contractor’s insurance policy, before the State of Hawaii issues the Notice
28 to Proceed, the Contractor shall obtain and submit to the Engineer a
29 Certificate of Insurance and a written policy endorsement that confirms the
30 State of Hawaii and its officers and employees are additional insureds for
31 the specific State project number and project title under such insurance
32 policies. The written policy endorsement must be issued by the insurance
33 company insuring the Contractor for the specified policy type or by an agent
34 of such insurance company who is vested with the authority to issue a
35 written policy endorsement. The insurer’s agent shall also submit written
36 confirmation of such authority to bind the insurer. Any delays in the
37 issuance of the Notice to Proceed attributed to the failure to obtain the proof
38 of the State of Hawaii and its officers and employees’ additional insured
39 status shall be charged to the Contractor.
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41 A mere Certificate of Insurance issued by a broker who represents
42 the Contractor (but not the Contractor’s insurer), or by any other party who
43 is not authorized to contractually name the State as an additional insured
44 under the Contractor’s insurance policy, is not sufficient to meet the
45 Contractor’s insurance obligations.
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Certificates shall contain a provision that coverages being certified will not be cancelled or materially changed without giving the Engineer at least thirty (30) days prior written notice. Contractor will immediately provide written notice to the Director should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, reduced in scope or coverage, or not renewed upon expiration. Should any policy be canceled before final acceptance of the work by the State, and the Contractor fails to immediately procure replacement insurance as specified, the State, in addition to all other remedies it may have for such breach, reserves the right to procure such insurance and deduct the cost thereof from any money due or to become due to the Contractor.

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

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

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

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

(1) Workers' Compensation. The Contractor shall obtain worker's compensation insurance for all persons whom they employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and

applicable State of Hawaii Worker's Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.

(2) Auto Liability. The Contractor shall obtain Auto Liability Insurance covering all owned, non-owned and hired autos with a Combined single Limit of not less than \$1,000,000 per occurrence for bodily injury and property damage with the State of Hawaii named as additional insured.

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

(a) Products - Completed/Operations Aggregate,

(b) Personal & Advertising Injury, and

(c) Bodily Injury & Property Damage

The General Liability insurance shall include the State as an Additional Insured. The required limit of insurance may be provided by a single policy or with a combination of primary and excess policies.

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

(II) Amend **Section 107.04 Overtime and Night Work** to add the following after line 157:

"Night work will not be allowed during the seabird fledging period of September 15 through December 15 of each year."

END OF SECTION 107