

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

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3       Make the following amendments to said Sections:

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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.  
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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.  
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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.  
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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.

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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.

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.  
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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.  
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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:  
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111                           **(a)** Products - Completed/Operations Aggregate,

112                           **(b)** Personal & Advertising Injury, and  
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114                           **(c)** Bodily Injury & Property Damage  
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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."  
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123 **(II) Amend 107.03 – Working Hours; Night Work** by adding the following  
124 after line 142.  
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126                   "Upon Award of the project, the Contractor shall apply for a Noise  
127 Variance for this project through the Department of Health according to 'Hawaii  
128 Administrative Rules Title 11, Chapter 11-46-8' for night work. If the variance is  
129 not granted or should the Department of Health modify, suspend or revoke the  
130 Noise Variance, the State will have the right to have part or all of the contract  
131 work done during the day. The Engineer and the Contractor will negotiate  
132 compensation for doing such work during the day.  
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134                   As part of obtaining the Noise Variance, the Contractor shall, as required  
135 by DOH, prepare all material and provide public notifications such as, but not  
136 limited to, mailings and newspaper notices. The Contractor shall coordinate with  
137 the Engineer and DOH for any public meetings required. The Contractor shall

secure the location, attend, host, and prepare all materials necessary for public meetings.

The Noise Variance application shall be from December 1, 2014 to June 30, 2016 and shall allow work during the following hours:

Monday to Thursday, from 6:00 p.m. to 7:00 a.m.  
Friday, from 6:00 p.m. to Saturday 9:00 a.m.  
Saturday, from 6:00 p.m. to Monday 7:00 a.m.

The following are assumed to be conditions of the DOH noise variance and the Contractor shall assume these conditions in preparing their proposal for this Contract:

- (1) Use of jackhammers, jumping jacks, hoe rams, and vibratory sheetpile drivers shall be prohibited after 10:00 p.m.
- (2) Use of cold planer shall be prohibited after 12:00 a.m.
- (3) Contractor shall make every effort to minimize noise emanating from the project.
- (4) The use of reverse signal alarms shall be prohibited between 8:00 p.m. and 7:00 a.m. The alternative method utilizing a ground guide for signaling shall be employed.
- (5) Traffic noise from heavy vehicles traveling to and from the construction site shall be minimized near residences.
- (6) The Contractor shall have a job-site inspector to whom immediate complaints can be forwarded for prompt response and who shall have the general responsibility of monitoring quiet work procedures.
- (7) The Contractor shall give sufficient notice regarding the project to any residents that may be impacted by the nighttime activity. The notification for the planned nighttime activity shall also contain the name and telephone number of the job-site inspector. In addition, a copy of any notifications, as well as progress reports, shall be sent to the Indoor and Radiological Health Branch.
- (8) If noise level is such that numerous complaints are received by the Department, the Contractor shall cease operations upon receipt of an order and complete the project during hours on weekdays and weekends as directed.

- 183 (9) The Contractor shall notify the Indoor and Radiological Health  
184 Branch, State Department of Health, as to the date and time of any  
185 variance hour activity as soon as the dates are confirmed and also  
186 when the project is completed.  
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- 188 (10) Should the duration of the project continue beyond the expiration  
189 date, the Contractor shall submit a request for extension to the  
190 Engineer along with an updated work schedule at least one (1)  
191 month prior to the expiration date.  
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- 193 (11) Pursuant to H.R.S., Chapter 342F, Section 342F-5(d)(3), the  
194 Contractor shall perform noise sampling during the variance hours  
195 and report the results of such sampling to the Indoor and  
196 Radiological Health Branch.  
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198 The Engineer will pay for obtaining the Noise Variance on a lump sum  
199 basis under pay item 107.1000 – Noise Variance.”  
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201 (III) Add **107.18 – Avoidance and Minimization Measures for Endangered**  
202 **Species** by adding the following after line 745:  
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204 **“107.18 – Avoidance and Minimization Measures for Endangered Species**  
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206 (A) No nighttime construction will be permitted during the seabird  
207 fledging period of September 15<sup>th</sup> through December 15<sup>th</sup>.  
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209 (B) Night work between December 16<sup>th</sup> and September 14<sup>th</sup> is  
210 permitted, provided all construction lights are shielded and directed toward  
211 the ground.  
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213 (C) No clearing, grubbing, or trimming of woody plants greater than 15’  
214 shall be allowed during the Hawaiian Hoary Bat pup-rearing season (June  
215 1<sup>st</sup> through September 15<sup>th</sup>).”  
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218 **END OF SECTION 107**