

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

2
3 Make the following amendments to said Section:

4
5 **(I)** Amend **Section 107.01 Insurance Requirements** from lines 5 to 81 to
6 read as follows:

7
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.
105

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

110 **(a)** Products - Completed/Operations Aggregate,

111 **(b)** Personal & Advertising Injury, and
112

113 **(c)** Bodily Injury & Property Damage
114
115

116 The General Liability insurance shall include the State as an
117 Additional Insured. The required limit of insurance may be provided
118 by a single policy or with a combination of primary and excess
119 policies.
120

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

132 **(II) Amend Subsection 107.03 – Working Hours; Night Work** by revising
133 lines 140 to 142 to read as follows:
134

135 "Normal working hours shall be from 8:00 p.m. to 4:30 a.m., Sunday
136 through Thursday, excluding holidays."
137

138 **(III) Amend Subsection 107.14 – Responsibility for Damage Claims;**
139 **Indemnity** by revising line 396 to read as follows:

140
141 “the State, its employees and officers, Coco Palms Ventures, LLC.,
142 Hawaii Movie Tours, Inc., County of Kauai, Department of Land and
143 Natural Resources, Phillip G. Harrison, Trustee, Gun Soon Lee,
144 Korean Bar-B-Q, Kauai Water Ski, Surf and Kayak Shop, Amy E. Atry,
145 Revocable Living Trust, Melanie Quetula, Coconut Coast Activities,
146 JC’s Flower & Mini Mart, Michael Fuse, Wailua Shopping Plaza,
147 Kintaro Japanese Restaurant, Café Coco, Hiep X. Hoang, Hong Kong
148 Café, Erwin Agcaoili, John Arruda, et. al., Esther K. Medeiros, Lovelan
149 Napoleon, Suzanne R. Larson, et. al., Mary Young, Smith Motor Boat,
150 against any loss, demand, claim...”

151
152 **(IV) Amend Subsection 107.14 – Responsibility for Damage Claims;**
153 **Indemnity** by revising line 410 to read as follows:

154
155 “fail to undertake the defense of the State, its employees and officers,
156 Coco Palms Ventures, LLC., Hawaii Movie Tours, Inc., County of
157 Kauai, Department of Land and Natural Resources, Phillip G. Harrison,
158 Trustee, Gun Soon Lee, Korean Bar-B-Q, Kauai Water Ski, Surf and
159 Kayak Shop, Amy E. Atry, Revocable Living Trust, Melanie Quetula,
160 Coconut Coast Activities, JC’s Flower & Mini Mart, Michael Fuse,
161 Wailua Shopping Plaza, Kintaro Japanese Restaurant, Café Coco,
162 Hiep X. Hoang, Hong Kong Café, Erwin Agcaoili, John Arruda, et. al.,
163 Esther K. Medeiros, Lovelan Napoleon, Suzanne R. Larson, et. al.,
164 Mary Young, Smith Motor Boat, after a....”

165
166 **END OF SECTION 107**