

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:

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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 (b) Personal & Advertising Injury, and

113 (c) Bodily Injury & Property Damage
114
115
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 **(II) Amend 107.03 – Working Hours; Night Work** by adding the following
124 after line 142.
125

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.
133

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, 2015 to June 30, 2017 and shall allow work during the following hours:

Sunday thru Thursday nights, from 8:30 pm to 12:00 midnight
Monday thru Friday mornings, from 12:00 midnight to 5:30 am

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 pm.
- (2) Use of cold planer shall be prohibited after 12:00 am.
- (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 pm and 7:00 am. 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 the 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.
- (9) The Contractor shall notify the Indoor and Radiological Health Branch, State Department of Health, as to the date and time of any

variance hour activity as soon as the dates are confirmed and also when the project is completed.

(10) Should the duration of the project continue beyond the expiration date, the Contractor shall submit a request for extension to the Engineer along with an updated work schedule at least one (1) month prior to the expiration date.

(11) Pursuant to H.R.S., Chapter 342F, Section 342F-5(d)(3), the Contractor shall perform noise sampling during the variance hours and report the results of such sampling to the Indoor and Radiological Health Branch.

(III) Add **107.18 – Avoidance and Minimization Measures for Endangered Species** by adding the following after line 745:

“107.18 – Avoidance and Minimization Measures for Endangered Species

(A) No nighttime construction will be permitted between September 15th through December 15th, during the seabird fledging period.

(B) From December 16th to September 14th, nighttime construction is permitted with all lighting shielded and directed toward the ground to avoid attracting adult seabirds as they travel from the ocean to their breeding areas.

(C) From June 1st to September 15th, trees and shrubs taller than 15 feet will not be trimmed or cleared to avoid impacts to the Hawaiian Hoary Bat.”

END OF SECTION 107