

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. 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

114 (c) Bodily Injury & Property Damage
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 **(4) Builders Risk For All Work.** The Contractor shall take out a
124 policy of builder's risk insurance for the full replacement value of
125 the project work from a company licensed or otherwise authorized
126 to do business in the State of Hawaii; naming the State as an
127 additional insured under each policy; and covering all work, labor,
128 and materials furnished by such Contractor and all its
129 subcontractors against loss by fire, windstorm, tsunamis,
130 earthquakes, lightning, explosion, other perils covered by the
131 standard Extended Coverage Endorsement, vandalism, and
132 malicious mischief. Refer to SPECIAL CONDITIONS for any
133 additional requirements."
134

135 **(II) Amend 107.03 – Working Hours; Night Work** by adding the following
136 after line 142.
137

138 "Perform night work only as follows:

139
140 Sunday thru Thursday nights, from 8:00 P.M. to 12:00 midnight
141 Monday thru Friday mornings, from 12:00 midnight to 5:00 A.M.
142

143 The Engineer has secured a Noise Variance from the Department of
144 Health according to Administrative Rules Title 11, Chapter 11-46, Section 11-46-
145 8 for this work."
146

147
148 **(III) Add 107.18 – Avoidance and Minimization Measures for Endangered**
149 **Species** by adding the following after line 745:
150

151 **"107.18 – Avoidance and Minimization Measures for Endangered Species**
152

153 **(A)** No nighttime construction will be permitted between September
154 15th through December 15th, during the seabird fledging period.
155

156 **(B)** From December 16th to September 14th, nighttime construction is
157 permitted with all lighting shielded and directed toward the ground to avoid
158 attracting adult seabirds as they travel from the ocean to their breeding
159 areas.
160

161 **(C)** From June 1st to September 15th, trees and shrubs taller than 15
162 feet will not be trimmed or cleared to avoid impacts to the Hawaiian Hoary
163 Bat."
164

165
166
167 **END OF SECTION 107**