

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  
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

(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. Refer to SPECIAL CONDITIONS for any additional requirements.

(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. Refer to SPECIAL CONDITIONS for any additional requirements.

(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. Refer to SPECIAL CONDITIONS for any additional requirements."

(II) Amend **Section 107.03 Working Hours; Night Work.** By adding the following after line 143:

“Night work will not be allowed during the seabird fallout season period from September 15 to December 15.”

**(III) Add Section 107.18 Refuge Access and Safety Permit Stipulations for Special Use Permit #12522-22-105 for TMK (4) 5-3-001:007 and Section 107.19 Construction Parcel Requirements after line 745:**

**“107.18 Refuge Access and Safety Permit Stipulations for Special Use Permit #12522-22-105 for TMK (4) 5-3-001:007. Contractor shall comply with permit signed 12/16/21:**

**(A)** When working in the Hanalei National Wildlife Refuge, Special Use Permit #12522-22-105 applies. The permit has been included as part of the Contract Documents. Some of the permit conditions are listed below, but the Contractor shall comply with all conditions listed in the permit. Payment for complying with the permit conditions shall be considered incidental to the various contract items.

**(B)** Advanced coordination is required before the project begins and once completed, the point of contact for the refuge will be Deputy Project Leader, Brooke Burrows (cell: 808-635-0920)

**(C)** This permit must be kept on-hand during the project, along with all necessary licenses.

**(D)** The Contractor bears the responsibility to repair any damages to the work area and surrounding refuge infrastructure, which occur during the work being authorized through this permit.

**(1)** Any damage will be corrected immediately at the cost of the Contractor to whom the equipment belongs.

**(2)** A rock bollard or something similar will be placed by the Contractor in front of the gate keypad to shield the keypad from any further damage as a result of work in the permitted area.

**(E)** Prior to work beginning in the permitted area at Hanalei National Wildlife Refuge, all machinery/equipment will be washed and cleaned of all mud and foreign material to avoid introduction of invasive species.

**(1)** Power washing of all track/or tires is recommended to be done prior to arrival to the refuge because water is not available onsite.

**(F)** All trash or other objects brought onto the refuge must be removed once project is completed.

(1) Eating on the refuge is not allowed because food crumbs attract rats and ants that prey on ground nesting birds. Please eat lunch off of refuge property.

(G) Storing of fuel on refuge property is prohibited.

(1) In case of any fuel, oil or other leaks on refuge property, the damage must be mitigated as soon as possible, and refuge deputy project leader, Brooke Burrows (808-635-0922) must be immediately informed.

(H) Taking of endangered species is prohibited. A 5-mph speed limit will be adhered to in order to minimize disturbance. In the case that an endangered species does not move out of way on its own accord then the hauling operation must wait for the bird to move or a different route can be established. If any nest are found or if there is any form of take of an endangered species, contact the refuge biologist Kim Uyehara (cell: 808-635-9309).

(I) Safety is of paramount importance to the Kauai National Wildlife Refuge Complex. All accidents or injuries should be reported to Deputy Project Leader as soon as possible.

**107.19 Construction Parcel Requirements.** Construction Parcels C1, C2 and C4 right-of-entries are incorporated into the Contract Documents.

Contractor shall comply with the following requirements for Construction Parcel C2 within property TMK (4) 5-4-004:010:

(A) Access the slope work from Kuhio Highway. Access for slope construction from the property's driveway is not permitted.

(B) Coordinate with the owner for driveway access. Only limited access thru the property driveway is allowed for collection and removal of spoils that fall down the slope. The spoils shall be removed offsite to a permitted disposal site.

(C) Vehicles shall back into or back out of the driveway. Vehicles are not allowed to turn around off of the driveway. Vehicles and personnel are not permitted beyond the construction parcel limits.

(D) Storing of material on or along the property driveway is not permitted."

**END OF SECTION 107**