

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 State  
21      as an additional insured to the policy which status shall be maintained for  
22      the full period of the contract until final acceptance of the work by State.  
23

24               The Contractor shall obtain all required insurance as part of the  
25      contract price. Where there is a requirement for the State of Hawaii and its  
26      officers and employees to be named as additional insureds under any  
27      Contractor’s insurance policy, before the State of Hawaii issues the Notice  
28      to Proceed, the Contractor shall obtain and submit to the Engineer a  
29      Certificate of Insurance and a written policy endorsement that confirms the  
30      State of Hawaii and its officers and employees are additional insureds for  
31      the specific State project number and project title under such insurance  
32      policies. The written policy endorsement must be issued by the insurance  
33      company insuring the Contractor for the specified policy type or by an agent  
34      of such insurance company who is vested with the authority to issue a  
35      written policy endorsement. The insurer’s agent shall also submit written  
36      confirmation of such authority to bind the insurer. Any delays in the  
37      issuance of the Notice to Proceed attributed to the failure to obtain the proof  
38      of the State of Hawaii and its officers and employees’ additional insured  
39      status shall be charged to the Contractor.  
40

41               A mere Certificate of Insurance issued by a broker who represents  
42      the Contractor (but not the Contractor’s insurer), or by any other party who  
43      is not authorized to contractually name the State as an additional insured  
44      under the Contractor’s insurance policy, is not sufficient to meet the  
45      Contractor’s insurance obligations.  
46

47           Certificates shall contain a provision that coverages being certified  
48 will not be cancelled or materially changed without giving the Engineer at  
49 least thirty (30) days prior written notice. Contractor will immediately provide  
50 written notice to the Director should any of the insurance policies evidenced  
51 on its Certificate of Insurance form be cancelled, reduced in scope or  
52 coverage, or not renewed upon expiration. Should any policy be canceled  
53 before final acceptance of the work by the State, and the Contractor fails to  
54 immediately procure replacement insurance as specified, the State, in  
55 addition to all other remedies it may have for such breach, reserves the right  
56 to procure such insurance and deduct the cost thereof from any money due  
57 or to become due to the Contractor.  
58

59           Nothing contained in these insurance requirements is to be  
60 construed as limiting the extent of Contractor's responsibility for payment of  
61 damages resulting from its operations under this contract, including the  
62 Contractor's obligation to pay liquidated damages, nor shall it affect the  
63 Contractor's separate and independent duty to defend, indemnify and hold  
64 the State harmless pursuant to other provisions of this contract. In no  
65 instance will the State's exercise of an option to occupy and use completed  
66 portions of the work relieve the Contractor of its obligation to maintain the  
67 required insurance until the date of final acceptance of the work.  
68

69           All insurance described herein shall be primary and cover the insured  
70 for all work to be performed under the contract, all work performed incidental  
71 thereto or directly or indirectly connected therewith, including but not limited  
72 to traffic detour work, barricades, warnings, diversions, lane closures, and  
73 other work performed outside the work area and all change order work.  
74

75           The Contractor shall, from time to time, furnish the Engineer, when  
76 requested, satisfactory proof of coverage of each type of insurance required  
77 covering the work. Failure to comply with the Engineer's request may result  
78 in suspension of the work, and shall be sufficient grounds to withhold future  
79 payments due the Contractor and to terminate the contract for Contractor's  
80 default.  
81

82 **(B) Types of Insurance.** Contractor shall purchase and maintain  
83 insurance described below which shall provide coverage against claims  
84 arising out of the Contractor's operations under the contract, whether such  
85 operations be by the Contractor itself or by any subcontractor or by anyone  
86 directly or indirectly employed by any of them or by anyone for whose acts  
87 any of them may be liable.  
88

89 **(1) Workers' Compensation.** The Contractor shall obtain  
90 worker's compensation insurance for all persons whom they employ  
91 in carrying out the work under this contract. This insurance shall be  
92 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."

**END OF SECTION 107**