

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

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3 Make the following amendment 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.

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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.

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

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

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

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

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

(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 107.03 – Working Hours; Night Work by adding the following after line 143:

"The State has received approval for a Noise Variance (Docket No. 19-NR-VN-31) for the project from the Department of Health according to Chapter 342F, Hawaii Revised Statutes (HRS), and Chapter 11-46, Hawaii Administrative Rules (HAR) for night and weekend work. Should the Department of Health

modify, suspend, or revoke the Decision and Order for the Noise Variance, the State will have the right to have part or all of the contract work done during the day. The Engineer and Contractor will negotiate compensation for doing such work during the day.

The Noise Variance permits the Contractor to work from:

Sundays	All day (midnight to midnight)
Monday through Thursday	midnight to 5:30 a.m. and 7:00 p.m. to midnight
Friday	midnight to 5:30 a.m.

subject to the following restrictions including the equipment listed in Table 107.03-1 – Noise Variance Equipment List, and conditions during the variance hours:

- (1) The use of the concrete saws, pneumatic pavement breakers/jackhammers, backhoe with hammers, and the steel drum roller with vibration (Bomag) shall be prohibited after 10:00 p.m. within 500 feet of residences.
- (2) The Contractor shall make every effort to minimize noise emanating from the project.
- (3) The use of reverse signal alarms is prohibited from 8:00 p.m. to 7:00 a.m. Alternative methods such as utilizing a ground guide for signaling shall be employed.
- (4) Traffic noise from heavy vehicles traveling to and from the project site shall be minimized near residences.
- (5) 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.
- (6) If the noise level is such that numerous complaints are received by the Department of Health, the Contractor shall cease operations upon receipt of an order and complete the project during hours on weekdays and weekends as directed.
- (7) Pursuant to Section 342F-5(d)(3), HRS, the Contractor shall be required to perform noise sampling during the variance hours.

TABLE 107.03-1 – NOISE VARIANCE EQUIPMENT LIST
Backhoe
Backhoe with Hammer
Kickout Broom
Power Broom
Cold Planing Machine
Compressor (Air)
Concrete Saw
Electric Mudgun
Mini Excavator
Generator
Grader
Jumping Jack
Front Loader
Bobcat Skid Loader
Paver
Plate Compactor/Tamper
60 to 80 lbs. Pneumatic Pavement Breaker (Jackhammer)
Jumping Jack
Rubber Tire Roller
Static Rollers
Steel Drum Roller
Steel Drum Roller w/vibration
Vibratory Rollers
Shuttlebuggy
Spreader (Paving Machine)
Striping Machine
Distributor Truck
Dump Truck
Flatbed Truck
Hauling Truck
Labor Truck
Pick up Truck
Propane Truck
Striping Truck
Water Truck
Light Tower
Vac Truck with Sweeper
Vacuum

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END OF SECTION 107

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107-5a

12/23/20