

1 Amend **Section 106 – Control Of Material** to read as follows:  
2

3 **"SECTION 106 - CONTROL OF MATERIAL**  
4

5 **"106.01 Source of Supply and Quality Requirements.** The Contractor shall  
6 furnish, pay for, and install all materials required to complete the work, except  
7 materials that are designated in the contract documents to be furnished by the  
8 State.. Materials shall be in new condition as of the time of final acceptance  
9 subject to normal wear.  
10

11 All materials proposed to be used may be inspected and tested at any  
12 time and place including but not limited to the source of supply and locations of  
13 manufacture and fabrication. When requested by the Engineer, the Contractor  
14 shall notify the Engineer of the Contractor's proposed sources of materials prior  
15 to delivery. At the request of the Engineer, the Contractor shall provide  
16 reasonable and adequate testing facilities and equipment for the Engineer at the  
17 inspection site, at no cost to the State.  
18

19 **106.02 Material Sources.** With the written permission of and subject to  
20 conditions set by the Engineer, the Contractor may, at no cost to the State, use  
21 stone, gravel, sand, or other materials found within the project limits. Such  
22 permission will not be considered a change and may be revoked at any time for  
23 any reason by the Engineer at no cost to the State.  
24

25 The contract documents or Engineer may make available to the  
26 Contractor the option to use material from sources made available by the State.  
27 Designation of a source for material is not a representation by the Engineer of  
28 the quantity or quality of material obtainable or the method, equipment or work  
29 required to obtain material from the source. The Contractor is not obligated to  
30 use material from such sources. The Contractor bears all costs of using such  
31 material and assumes the risk that such material does not conform to contract  
32 requirements.  
33

34 **106.03 Material Sample; Sample Submittals; Notice of Change.**  
35

36 **(A) Material Sample.** Submission of material and equipment samples  
37 required by the contract documents or by the Engineer are exclusively for  
38 the benefit of the State's quality control monitoring of the project. Any  
39 statement or representation by the Engineer that any submitted sample is  
40 "ACCEPTED", "APPROVED", or other words to similar effect, shall not  
41 be deemed conclusive that the material and equipment for which a  
42 sample was submitted will conform to the contract requirements when  
43 incorporated into the work. The "ACCEPTANCE" or "APPROVAL" of any  
44 sample by the Engineer does not change or modify any contract  
45 requirements.  
46

47 The Engineer may require any or all materials to be tested or  
48 retested by means of samples or otherwise at any time. The Contractor  
49 shall collect and forward samples requested by the Engineer. In all cases,  
50 the Contractor shall furnish the required samples at no cost to the State.  
51 The Contractor shall not be entitled to payment for work that incorporates  
52 materials required to be tested or inspected until the Engineer completes  
53 the tests or inspections. Where samples are required from the completed  
54 work, the Contractor shall cut and furnish samples from the completed  
55 work at the sites and quantities designated by the Engineer. Samples so  
56 removed shall be replaced with material conforming to the contract  
57 requirements and refinished. No additional compensation will be allowed  
58 for the replacement of the sample with new material.  
59

60 Tests of the material samples will be made in accordance with the  
61 latest standards of HDOT Hawaii Test Methods, AASHTO, ASTM, or  
62 other recognized material organization specified in the contract  
63 documents as amended prior to the date of advertisement unless  
64 otherwise provided. References to HDOT Hawaii Test Method means  
65 "Hawaii Test Methods", published by the State of Hawaii, Department of  
66 Transportation, Highways Division, Materials Testing and Research  
67 Branch. The Engineer shall decide the tests and standards to be applied,  
68 whether a submitted material sample passes the tests and/or meets the  
69 standards, and whether a submitted material sample shall be retested.  
70

71 Each sample submitted shall have a label indicating project title  
72 and number, the material represented, its place of origin, the names of the  
73 producers and suppliers, the Contractor, and the portion of the work for  
74 which the material is intended. Samples shall be marked to indicate  
75 where the materials represented are required by the contract documents.  
76

77 A letter in duplicate shall accompany each delivery of samples and  
78 shall contain a list of the samples and the same information required on  
79 the labels accompanying each sample.  
80

81 **(B) Sample Submittals.**  
82

83 **(1) Contractor's Duty.** When sample submittals are required  
84 by the contract documents, the Contractor shall review, approve,  
85 indicate its approval and submit to the Engineer samples of the  
86 materials to be used in the work. It is the responsibility of the  
87 Contractor to submit required material and color samples for review  
88 at the earliest possible date after the date of award. Delays caused  
89 by the failure of the Contractor to submit material and color  
90 samples will not be considered as justifiable reasons for contract  
91 time extension or additional compensation.  
92

93 (2) **Deviations.** The Contractor shall include with the submittal  
94 of samples written notification of, and shall clearly identify, all  
95 deviations from the contract documents. Failure to so notify the  
96 Engineer of, and identify, such deviations shall be grounds for the  
97 subsequent rejection of the related work or materials,  
98 notwithstanding that the sample upon its submittal was accepted by  
99 the Engineer. Any deviations will be subject to Subsection 102.16  
100 – Substitution of Materials and Equipment. If the deviations are not  
101 acceptable to the Engineer, the Contractor shall be required to  
102 furnish the samples as specified or indicated on the contract  
103 documents at no additional cost or time.  
104

105 (3) **Review Process.** The Engineer will inspect or test samples  
106 and communicate the results of the inspection or test within 45  
107 days of receipt unless otherwise agreed between the Contractor  
108 and the Engineer or as stated in the contract documents. If the  
109 volumes of samples submitted at any time for review is unusually  
110 large, the Contractor may inform the Engineer of its preferred  
111 order for review and the Engineer will use reasonable efforts to  
112 accommodate the Contractor's priorities.  
113

114 If the Engineer notifies the Contractor that a sample does  
115 not conform to the contract documents, the Contractor shall  
116 promptly submit a sample conforming to the requirements of the  
117 contract documents, indicating in writing on the transmittal and the  
118 subject sample what portions of the resubmittal have been altered.  
119

120 No mark or notation made by the Engineer on or  
121 accompanying the return of any sample to the Contractor shall be  
122 considered a request or order for a change or extra work. If the  
123 Contractor believes any such mark or notation constitutes a request  
124 for a change or extra work for which it is entitled to an adjustment  
125 in contract price and/or time, the Contractor must follow the  
126 procedures established in Subsection 104.02 – Changes for oral  
127 orders, directions, instructions, interpretations, or determinations  
128 from the Engineer or else lose its right to claim for an adjustment.  
129

130 (C) **Notice of Change.** If during the course of the work the Contractor  
131 intends to change the source of supply of any previously submitted  
132 material, or the location of any manufacturing or fabrication plant, the  
133 Contractor shall provide the Engineer written notice of such intended  
134 change not less than ten days before the change is made.  
135

136 **106.04** (Unassigned). (See 105.11 – Inspection of the Work and Materials.)  
137

**106.05 Storage and Handling of Materials.** The Contractor as part of the contract price shall provide all storage space. Materials shall be stored and handled to preserve their quality and fitness for the work. Stored materials shall be located so as to facilitate their prompt inspection by the Engineer. Unless otherwise provided by the contract documents or by separate written agreement with the State, no site within the project limits may be used for storage purposes or for the placing of the Contractor's plant and equipment. Prior to final inspection, the Contractor at no additional cost to the State shall restore all storage sites within the project limits to their pre-existing or similar condition.

**106.06** (Unassigned). (See 106.05 – Storage and Handling of Materials).

**106.07 Non-Conforming Materials.** All materials not conforming to the contract requirements, whether in place or not, shall be promptly removed from the site of the work when directed by the Engineer in writing. If the Contractor fails to comply forthwith with any order of the Engineer made under the provisions of this subsection, the Engineer shall have the authority to remove and replace non-conforming materials and charge the removal and replacement to the Contractor.

**106.08 State-Furnished Material.** The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the State. The contract documents or the Engineer will establish the time and means of delivery or the turning over of State-furnished materials.

Unless otherwise stated in the contract documents, it shall be conclusively presumed that State-furnished materials conform to the contract documents as of the time of delivery to the Contractor

Upon receipt, the Contractor shall inventory, store, inspect, protect, distribute, and install State-furnished material at its risk and cost."

**106.09** (Unassigned). (See 106.03 (A)- Material Sample).

**106.10 Certificate of Compliance.** In addition to or instead of the submission of material samples or equipment for inspection or testing, the Engineer or the contract documents may require the Contractor to submit to the Engineer a Certificate of Compliance from the manufacturer and/or supplier.

A Certificate of Compliance shall be an English language document containing:

- (1) A description of the material supplied.

182 (2) Means of material identification, including but not limited to label,  
183 lot number, heat number, batches, or marking including the respective  
184 quantities of each supplied for the work.

185  
186 (3) Statement that the material complies in all respects with the  
187 requirements of the cited specifications within the contract documents.

188  
189 (4) When required by the Engineer, test results confirming that the  
190 material complies in all respect with the requirements of the contract  
191 documents.

192  
193 (5) The name, title, and signature of the authorized person acting on  
194 behalf of the manufacturer or the supplier of the material, the date of the  
195 signature, and the name and address of the manufacturer or supplier of  
196 the material.

197  
198 **106.11 Steel and Iron Construction Material.** The major quantities of steel  
199 and iron construction material that is permanently incorporated into the project  
200 shall consist of American-made materials only.

201  
202 The Contractor may utilize minor amounts of foreign steel and iron in this  
203 project provided the cost of the foreign material used does not exceed one-tenth  
204 of one percent of the total contract cost or \$2,500.00, whichever is greater.

205  
206 American-made material is defined as material having all manufacturing  
207 processes occur in the United States. The action of applying a coating to steel  
208 or iron is deemed a manufacturing process. Coating includes epoxy coating,  
209 galvanizing, aluminizing, painting, and any other coating that protects or  
210 enhances the value of steel or iron. Any process from the original reduction from  
211 ore to the finished product constitutes a manufacturing process for iron. The  
212 following are considered to be steel manufacturing processes.

213  
214 (1) Production of steel by any of the following processes:

215  
216 (a) Open hearth furnace.

217  
218 (b) Basic oxygen.

219  
220 (c) Electric furnace.

221  
222 (d) Direct reduction.

223  
224 (2) Rolling, heat treating, and any other similar processing.

225  
226 (3) Fabrication of the products.

- (a) Spinning wire into cable or strand.
- (b) Corrugating and rolling into culverts.
- (c) Shop fabrication.

A certification of materials origin will be required for any items comprised of, or containing steel or iron construction materials prior to such items being incorporated into the permanent work.

**106.12 Recycling of Waste Glass.** (Unassigned) See 717 - Cullet and Cullet-Made Materials).

**106.13 Payment for Deleted Materials.**

**(A) Canceled Orders.** If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the Engineer, the Contractor shall use its best efforts in a timely manner to cancel the order. The State will pay reasonable cancellation charges required by the supplier. The Contractor will be paid an additional 7 percent markup on all reasonable cancellation charges for compensation for overhead and profit.

**(B) Returned Materials.** If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, if such material is returnable to the supplier and the Engineer so directs, the material shall be returned. After the Contractor returns acceptable material to the supplier, the State will pay for the reasonable charges made by the supplier or other source for the return of the material. The Contractor shall be paid a markup for overhead and profit on charges made by the supplier. The Contractor shall be paid a 7 percent markup on the reasonable charges made by the supplier or other source for returning the material for compensation for overhead and profit. The cost to the Contractor for handling the returned material will be paid as provided in Subsection 104.06 - Methods of Price Adjustment.

**(C) Uncancelled Material.** If orders for acceptable material that was deleted cannot be canceled at a reasonable cost or returned, it will be paid for at the actual cost to the Contractor including a markup for overhead and profit of 7 percent. In such cases the material paid for shall become the property of the State and the cost of further storage and handling will be paid as provided in Subsection 104.06 - Methods of Price Adjustment.

272 All charges the Contractor proposes for the acceptable material  
273 that was deleted shall be properly itemized and supported by sufficient  
274 substantiating legible data to permit evaluation. The Engineer will  
275 determine whether the proposal is acceptable.  
276

277 **106.14 Assignment Of Antitrust Claims For Overcharges For Goods and**  
278 **Materials Purchased.** Vendor and purchaser recognize that in actual economic  
279 practice, overcharges resulting from antitrust violations are in fact usually borne  
280 by the purchaser. Therefore, vendor hereby assigns to purchaser any and all  
281 claims for such overcharges as to goods and materials purchased in connection  
282 with this order or contract, except as to overcharges which result from antitrust  
283 violations commencing after the price is established under this order or contract  
284 and which are not passed on to the purchaser under an escalation clause.  
285

286 Contractor and owner recognize that in actual economic practice,  
287 overcharges resulting from antitrust violations are in fact usually borne by the  
288 owner. Therefore, Contractor hereby assigns to owner any and all claims for  
289 such overcharges as to goods and materials purchased in connection with this  
290 order or contract, except as to overcharges which result from antitrust violations  
291 commencing after the price is established under this order or contract and any  
292 contract change order. In addition, Contractor warrants and represents that each  
293 of its first tier suppliers and subcontractors shall assign any and all such claims  
294 to owner, subject to the aforementioned exception."  
295

296 **106.15 Unauthorized Excavation.** Unless otherwise expressly directed or  
297 authorized by the contract documents, Contractor shall not excavate beyond the  
298 excavation limits for the purpose of obtaining materials. The site disturbed by  
299 unauthorized excavation shall be returned to the condition existing before such  
300 unauthorized excavation at no cost to the State. Any unauthorized excavation  
301 shall be filled, at the direction of the Engineer, with either the material taken out  
302 or a substitute material selected by the Engineer."  
303

304  
305 **END OF SECTION 106**  
306