

1 Amend **Section 108 - Prosecution and Progress** to read as follows:  
2

3 **"SECTION 108 - PROSECUTION AND PROGRESS**  
4

5 **108.01 Subcontracts.**  
6

7 **(A) Subcontract Requirements.** Nothing contained in the contract  
8 documents shall create a contractual relationship between the State and  
9 any subcontractor.

10  
11 Subject to the provisions of Section 103D-302, HRS, the  
12 Contractor may subcontract a portion of the work but the Contractor shall  
13 remain responsible for the work so subcontracted.  
14

15 The Contractor shall not sublet, sell, transfer, assign, or  
16 otherwise dispose of any duty the Contractor may have pursuant to the  
17 contract without the written consent of the State  
18

19 The Contractor shall perform with his/her own organization, work  
20 amounting to not less than 30 percent of the total contract cost, except  
21 that any items designated by the State in the contract as 'specialty items'.  
22 Where an entire item is subcontracted, the value of work subcontracted  
23 will be based on the contract item bid price. When a portion of an item  
24 is subcontracted, the value of work subcontracted will be estimated by  
25 the Engineer and be based on the cost of such portion of the contract  
26 items.  
27

28 The 'Specialty Items' of work for this project are as follows:  
29

Section No.	Description
401	Contract Item No. 401.1000 under Section 401 - Asphalt Concrete Pavement
621	All Contract Items under Section 621 - Traffic Control Signs
622	All Contract Items under Section 622 - Highway Lighting System
623	All Contract Items under Section 623 - Traffic Signal System
629	All Contract Items under Section 629 - Pavement Markings
650	All Contract Items under Section 650 - Curb Ramps

46 No subcontract shall release the Contractor of any liability under  
47 the contract and bonds.

48  
49 **(B) Substituting Subcontractors.** Under Section 103D-302, HRS,  
50 the Contractor is required to list the names of persons or firms to be  
51 engaged by the Contractor as a subcontractor or joint contractor in the  
52 performance of the contract. Contractors may enter into subcontracts  
53 only with subcontractors listed in the proposal or with non-listed joint  
54 contractors/subcontractors permitted under Subsection 102.06 –  
55 Preparation of Proposal. No subcontractor may be added or deleted  
56 and substitutions will be allowed only if the subcontractor:

- 57  
58 (1) Fails, refuses or is unable to enter into a subcontract, or  
59  
60 (2) Becomes insolvent; or  
61  
62 (3) Has its subcontractor's license suspended or revoked; or  
63  
64 (4) Has defaulted or has otherwise breached the subcontract in  
65 connection with the subcontracted work; or  
66  
67 (5) Is unable to comply with other requirements of law  
68 applicable to Contractors, subcontractors and public works  
69 projects.  
70

71 When the subcontractor is not prosecuting the work in accordance  
72 with the contract, the Contractor shall immediately remove the  
73 subcontractor from the project, upon receipt of a written notice from the  
74 Engineer. The subcontractor shall not again be employed on the  
75 project.  
76

77 Requests to substitute a subcontractor shall be allowed only upon  
78 the written approval of the Engineer. The Contractor agrees to hold the  
79 State harmless, defend and indemnify the State for all claims, liabilities,  
80 or damages whatsoever, including attorney's fees arising out of or related  
81 to the approval or disapproval of the substitution.  
82

83 **108.02 Notice to Proceed (NTP).** A notice to proceed will be given to the  
84 Contractor within 30 days from the date of execution of the contract but no later  
85 than 12/14/04. The notice to proceed will indicate the date the Contractor is  
86 expected to begin the construction and from which date contract time will be  
87 charged.  
88

89 The Contractor shall begin work within 5 calendar days from the date in  
90 the notice to proceed and shall diligently prosecute the same to completion  
91 within the contract time. In the event that the Contractor fails to start the work,  
92 the Engineer may terminate the contract in accordance with Subsection 108.11 –  
93 Termination of Contract for Cause. The Contractor shall notify the Engineer at  
94 least three working days before beginning work.

95  
96 The Contractor shall notify the Engineer at least 24 hours before restarting  
97 work after a suspension of work pursuant to Subsection 108.10 – Suspension of  
98 Work.  
99

100 The Contractor shall not begin work before the date in the notice to  
101 proceed. Any work done prior to the start date established by the notice to  
102 proceed will only be considered authorized work and be paid for as provided in  
103 the contract after the start date in the notice to proceed is reached.  
104

105 When construction is started, the Contractor shall work expeditiously and  
106 pursue the work diligently until it is complete. If only a portion of the work is to  
107 be done in stages, the Contractor shall leave the area safe and usable for the  
108 user agency at the end of each stage.  
109

110 **108.03 Prosecution of Work.** Unless otherwise permitted by the Engineer,  
111 in writing the Contractor shall not commence with physical construction unless  
112 sufficient materials and equipment are available for either continuous  
113 construction or completion of a specified portion of the work.  
114

115 **108.04 Preconstruction Data Submittal.** The awardee shall submit to the  
116 Engineer for information and review the pre-construction data within 15 days  
117 from the date of notice of intent to enter the contract. Until the items listed  
118 below are received and found acceptable by the Engineer, the Contractor shall  
119 not commence work unless otherwise authorized to do so in writing and subject  
120 to such conditions set by the Engineer. No progress payment will be made to  
121 the Contractor until the Engineer acknowledges, in writing, receipt of the  
122 following preconstruction data submittals acceptable to the Engineer:  
123

- 124 (1) List of the Superintendent and other Supervisory Personnel;
- 125
- 126 (2) Name of person(s) authorized to sign for the Contractor;
- 127
- 128 (3) Work Schedule;
- 129
- 130 (4) Initial Progress Schedule (See Subsection 108.07 – Progress
- 131 Schedule)
- 132
- 133 (5) Water Pollution and Siltation Control Submittals;
- 134
- 135 (6) Solid Waste Disposal form;
- 136
- 137 (7) Tax Rates;
- 138
- 139 (8) Insurance Rates
- 140

141 (9) Certificate of Insurance satisfactory to the Engineer that the  
142 Contractor has in place all insurance coverage required by the contract  
143 documents; and

144  
145 (10) Schedule of agreed prices

146  
147 (11) List of Suppliers.

148  
149 **108.05 Character and Proficiency of Workers.** The Contractor shall at all  
150 times provide adequate supervision and sufficient labor and equipment for  
151 prosecuting the work to full completion in the manner and within the time  
152 required by the contract. The superintendent and/or delegated representative  
153 shall act in a civil and honest manner in his/her dealings with the Engineer and  
154 his/her representative and the public in connection with the work.

155  
156 All workers shall possess the proper license and/or certification, job  
157 classification, skill and experience necessary to properly perform the work  
158 assigned to them.

159  
160 The Engineer may direct the removal of any worker(s) who does not carry  
161 out the assigned work in a proper and skillful manner or who is disrespectful,  
162 intemperate, violent, or disorderly. The worker shall be removed forthwith by  
163 the Contractor and will not work again without expressed permission of the  
164 Engineer.

165  
166 **108.06 Contract Time.**

167  
168 (A) **Calculation of Contract Time.** When the contract time is on a  
169 working day basis, the total contract time allowed for the performance of  
170 the work will be the number of working days shown in the contract plus  
171 any additional working days authorized in writing as provided hereinafter.  
172 The count of elapsed working days to be charged against contract time,  
173 will begin from the date of notice to proceed and will continue  
174 consecutively to the date of final acceptance.

175  
176 When the contract is on a calendar day basis, the total contract time  
177 allowed for the performance of the work will be the number of calendar  
178 days shown in the contract plus any additional calendar days authorized in  
179 writing as provided hereinafter. The count of elapsed calendar days to  
180 be charged against contract time will begin from the date of notice to  
181 proceed and will continue consecutively to the date of final acceptance.  
182 This includes the NTP, holidays and non-working days. The Engineer  
183 will exclude calendar days elapsing between the orders of the Engineer to  
184 suspend work and resume work for suspensions not the fault of the  
185 Contractor.

187 When multiple shifts are used to perform the work, the State will  
188 not consider the hours worked over the normal eight working hours per  
189 day or night as an additional working day.  
190

191 **(B) Modifications of Contract Time.** Whenever the Contractor  
192 believes that an extension of contract time is justified, the Contractor shall  
193 serve written notice on the Engineer not more than five working days after  
194 the occurrence of the event that causes a delay or justifies a contract  
195 time extension. Contract time may be adjusted for the following reasons  
196 or events, but only if and to the extent the critical path has been  
197 impacted:  
198

199 **(1) Changes in the Work, Additional Work, and Delays**  
200 **Caused by the State.** If the Contractor believes that an  
201 extension of time is justified on account of any act or omission by  
202 the State, and is not adequately provided for in a field order or  
203 change order, it must request the additional time as provided  
204 above. At the request of the Engineer, the Contractor must  
205 show how the time of performance for the critical path will be  
206 affected and must also support the time extension request with  
207 schedules and statements from its subcontractors, suppliers,  
208 and/or manufacturers. Claims for compensation for any altered  
209 or additional work will be determined pursuant to Subsection  
210 104.02 – Changes.  
211

212 Additional time to perform the extra work will be added to the  
213 time allowed in the contract without regard to the date the change  
214 directive was issued, even if the contract completion date has  
215 passed. A change requiring time issued after contract time has  
216 expired will not constitute an excusal or waiver of pre-existing  
217 Contractor delay.  
218

219 **(2) Delay for Permits.** For delays in the routine application  
220 and processing time required to obtain necessary permits on the  
221 condition that the delay is not caused by the Contractor, and  
222 provided that as soon as the delay occurs, the Contractor notifies  
223 the Engineer in writing that the permits are not available. Time  
224 extensions will be the exclusive relief granted on account of such  
225 delays.  
226

227 **(3) Delays Beyond Contractor's Control.** For delays  
228 caused by acts of God, or the public enemy, fire, inclement  
229 weather days or adverse conditions resulting therefrom,  
230 earthquakes, floods, epidemics, quarantine restrictions, labor  
231 disputes impacting the Contractor or the State, freight embargoes  
232 and other reasons beyond the Contractor's control, the Contractor  
233 may be granted an extension of time provided that:

234  
235 (a) In the written notice of delay to the Engineer, the  
236 Contractor describes possible effects on the completion date  
237 of the contract. The description of delays shall:  
238

239 1. State specifically the reason or reasons for the  
240 delay and fully explain in a detailed chronology the  
241 effect of this delay to the work and/or the completion  
242 date.  
243

244 2. Include copies of pertinent documentation to  
245 support the time extension request.  
246

247 3. Cite the anticipated period of delay and the time  
248 extension requested.  
249

250 4. State either that the above circumstances have  
251 been cleared and normal working conditions restored  
252 as of a certain day or that the above circumstances  
253 will continue to prevent completion of the project.  
254

255 (b) The Contractor shall notify the Engineer in writing  
256 when the delay ends. Time extensions will be the  
257 exclusive relief granted and no additional compensation will  
258 be paid the Contractor for such delays.  
259

260 (4) **Delays in Delivery of Materials and/or Equipment.** For  
261 delays in delivery of materials and/or equipment which occur as a  
262 result of unforeseeable causes beyond the control and without fault  
263 of the Contractor, its subcontractor(s) or supplier(s), the Contractor  
264 may be granted an extension of time provided that it complies with  
265 the following procedures:  
266

267 (a) The Contractor's written notice to the Engineer must  
268 describe the delays and state the effect such delays may  
269 have on the Completion Date of the Contract.  
270

271 (b) The Contractor, if requested, must submit to the  
272 Engineer within five days after a firm delivery date for the  
273 material and equipment is established a written statement  
274 as to the delay to the progress of the project. The delay  
275 must be substantiated as follows:  
276

277 1. state specifically the reason or reasons for the  
278 delay. Explain in a detailed chronology the effect of  
279 this delay to the other work and/or the completion  
280 date.

281  
282 2. Submit copies of purchase order(s), factory  
283 invoice(s), bill(s) of lading, shipping manifest(s),  
284 delivery tag(s), and any other documents to support  
285 the time extension request.  
286

287 3. Cite the start and end date of the delay and the  
288 days requested therefore. The delay shall not  
289 exceed the difference between the originally  
290 scheduled delivery date versus the actual delivery  
291 date.  
292

293 (c) Time extensions shall be the exclusive relief granted  
294 and no additional compensation will be paid the Contractor  
295 on account of such delay.  
296

297 **(5) Delays for Suspension of Work.** When the performance  
298 of the work is totally suspended for one or more days (calendar or  
299 working days, as appropriate) by order of the Engineer in  
300 accordance with Subsections 108.10(A)(1), 108.10(A)(2), or  
301 108.10(A)(5) the number of days from the effective date of the  
302 Engineer's order to suspend operations to the effective date of the  
303 Engineer's order to resume operations shall not be counted as  
304 contract time and the contract completion date will be adjusted.  
305 During periods of partial suspensions of the work, the Contractor  
306 will be granted a time extension only if the partial suspension  
307 affects the critical path. If the Contractor believes that an  
308 extension of time is justified for a partial suspension of work, it  
309 must request the extension in writing at least five working days  
310 before the partial suspension will affect the critical operation(s) in  
311 progress. The Contractor must show how the critical path was  
312 increased based on the status of the work and must also support  
313 its claim if requested, with statements from its subcontractors. A  
314 suspension of work will not constitute a waiver of pre-existing  
315 Contractor delay.  
316

317 **(6) Contractor Caused Delays.** No time extension will be  
318 considered for the following:  
319

320 (a) Delays within the Contractor's control in performing  
321 the work caused by the Contractor, subcontractor and/or  
322 supplier.  
323

324 (b) Delays within the Contractor's control in arrival of  
325 materials and equipment caused by the Contractor,  
326 subcontractor and/or supplier in ordering, and fabricating,  
327 delivery.

328  
329 (c) Delays requested for changes which the Engineer  
330 determines unjustifiable due to the lack of supporting  
331 evidence or because the change is not on the critical path.  
332

333 (d) Delays caused by the failure of the Contractor to  
334 submit for review and acceptance by the Engineer, on a  
335 timely basis, such as but not limited to shop drawings,  
336 descriptive sheets, material samples, and color samples  
337 except as covered in Subsection 108.06(B)(3) and  
338 108.06(B)(4).  
339

340 (e) Failure to follow the procedure within the time allowed  
341 qualifying for a time extension.  
342

343 (7) **Reduction in Time.** If the State deletes or modifies any  
344 portion of the work, an appropriate reduction of contract time may  
345 be made in accordance with Subsection 104.02 - Changes.  
346

347 **108.07 Progress Schedules.**  
348

349 (A) **Forms of Schedule.** All schedules shall be submitted using the  
350 specific computer program designated in the bid documents. If no such  
351 scheduling software program is designated, then all schedules shall be  
352 submitted using the latest version of SureTrak Project Manager by  
353 Primavera Systems, Inc.  
354

355 Schedule submittals shall be as follows:  
356

357 (1) **For Contracts \$2,000,000) or less or For Contract Time**  
358 **100 Working Days or 140 Calendar Days or less.** For  
359 contracts of \$2,000,000 or less or for contract time of 100 working  
360 days or 140 calendar days or less, the progress schedule will be a  
361 Time Scaled Logic Diagram (TSLD). The Contractor shall submit  
362 a TSLD submittal package and it shall meet the following  
363 requirements and have these essential and distinctive elements:  
364

365 (a) The major features of work, such as but not limited to  
366 BMP installation, grubbing, roadway excavation, structure  
367 excavation, structure construction, shown in the  
368 chronological order in which the Contractor proposes to work  
369 that feature or work and its location on the project. The  
370 schedule shall account for normal inclement weather,  
371 unusual soil or other conditions that may influence the  
372 progress of the work, schedules, and coordination required  
373 by any utility, off or on site fabrications, and other pertinent  
374 factors that relate to progress;

(b) All features listed or not listed in the contract documents that the Contractor considers a controlling factor for the timely completion of the contract work;

(c) The time span and sequence of the activities or events for each feature, and its interrelationship and interdependencies in time and logic to other features in order to complete the project;

(d) The total anticipated time necessary to complete work required by the contract;

(e) A chronological listing of critical intermediate dates or time periods for features or milestone or phases that can affect timely completion of the project;

(f) Major activities related to the location on the project;

(g) Non-construction activities, such as submittal and acceptance periods for shop drawings and material, procurement, testing, fabrication, mobilization, and demobilization or order dates of long lead material;

(h) Set schedule logic for out of sequence activities to retain logic. In addition, open ends shall be non-critical;

(i) Show target bars for all activities;

(j) Vertical and horizontal sight lines both major and minor shall be used as well as a separator line between groups. The Engineer shall determine frequency and style.

(k) The file name, print date, revision number, data and project title and number shall be included in the title block; and

(l) Have columns with the appropriate data in them for activity ID, Description, Original Duration, Remaining Duration, Early Start, Early Finish, Total Float, Percent Complete, Resources. The Resource column shall list who is responsible for the work to be done in the activity. These columns shall be to the left of the bar chart.

**(2) For Contracts Which Have A Contract Amount More Than \$2,000,000 Or Having A Contract Time Of More Than 100 Working Days Or 140 Calendar Days.** For contracts which

**CMAQ-0700(50)R**

**108-9a**

**7/19/04**

422 have a contract amount more than \$2,000,000 or contract time of  
423 more than 100 working days or 140 calendar days, the Contractor  
424 shall submit a Timed-Scaled Logic Diagram (TSLD) and it shall  
425 meet the following requirements and have these essential and  
426 distinctive elements:  
427

- 428 (a) The information and requirements listed in A above;
- 429
- 430 (b) Additional reports and graphics available from the  
431 software as requested by the Engineer;
- 432
- 433 (c) Sufficient detail to allow at least weekly monitoring of  
434 the Contractor and subcontractor's operations;
- 435
- 436 (d) The time scaled schematic shall be on a calendar or  
437 working days basis. What will be used shall be  
438 determined by how the Contract keeps track of time. It will  
439 be the same. Plot the critical calendar dates anticipated;
- 440
- 441 (e) Breakdown of activity, such as forming, placing  
442 reinforcing steel, concrete pouring and curing, and stripping  
443 in concrete construction. Indicate location of work to be  
444 done in such detail that it would be easily determined where  
445 work would be occurring within approximately 200 feet;
- 446
- 447 (f) Latest start and/or finish dates for critical phasing;
- 448
- 449 (g) Identify responsible subcontractor, supplier, and  
450 others for their respective activity;
- 451
- 452 (h) No individual activity shall have duration of more than  
453 20 calendar days unless requested and approved by the  
454 Engineer;
- 455
- 456 (i) All activities shall have work breakdown structure  
457 codes and activity codes. The activity codes shall have  
458 coding that incorporates information for phase, location,  
459 who is responsible for doing work and type of operation and  
460 activity description and
- 461
- 462 (j) Incorporate all physical access and availability  
463 restraints.
- 464

465 **(B) Inspection and Testing.** All schedule shall provide reasonable  
466 time and opportunity for the Engineer to inspect and test each work  
467 activity.  
468

469 **(C) Engineer's Acceptance of Progress Schedule.** Submittal of  
470 and the Engineer's receipt of any progress schedule shall not imply the  
471 Engineer's approval of the schedule's breakdown, its individual elements,  
472 any critical path that may be shown nor shall it obligate the Department to  
473 make its personnel available outside normal working hours or the working  
474 hours established by the Contract in order to accommodate such  
475 schedule. The Contractor has the risk of all elements (whether or not  
476 shown) of the schedule and its execution. No claim for additional  
477 compensation and/or time shall be made by the Contractor or recognized  
478 by the Engineer for delays during any period for which an acceptable  
479 progress schedule or an updated progress schedule as required by  
480 Subsection 108.08(E) - Contractor's Continuing Schedule Submittal  
481 Requirements had not been submitted. Any acceptance or approval of  
482 the schedule shall be for general format only and shall not be deemed an  
483 agreement by the Department that the construction means, methods and  
484 resources shown on the schedule will result in work that conforms to the  
485 contract requirements or that the sequence or duration indicated are  
486 approved as feasible.

487  
488 **(D) Initial Progress Schedule.** The Contractor shall submit an initial  
489 progress schedule. The initial progress schedule shall consist of the  
490 following:  
491

492 (1) Four sets of the TSLD schedule,

493  
494 (2) All the software files and data to re-create the TSLD in a  
495 computerized software format as specified by the Engineer.

496  
497 (3) A listing of equipment that is anticipated to be used on the  
498 project. Including the type, size, make, year of manufacture,  
499 and all information necessary to identify the equipment in the  
500 Rental Rate Blue Book for Construction Equipment,

501  
502 (4) An anticipated manpower requirement graph plotting  
503 contract time and total manpower requirement. This may be  
504 superimposed over the payment graph.

505  
506 (5) A Method Statement that is a detailed narrative describing  
507 the work to be done and the method by which the work shall be  
508 accomplished for each major activity. A major activity is an  
509 activity that:

510  
511 (a) Has a duration longer than five days;

512  
513 (b) Is a milestone activity;  
514

515 (c) Is a contract item that exceeds \$10,000 on the  
516 contract cost proposal

517  
518 (d) Is a critical path activity; or

519  
520 (e) Is an activity designated as such by the Engineer.

521  
522 Each Method Statement shall include the following items  
523 needed to fulfill the schedule:

524  
525 (i) Quantity, type, make, and model of equipment,

526  
527 (ii) The manpower to do the work, specifying worker  
528 classification, and

529  
530 (iii) The production rate per eight hour day, needed to  
531 meet the time indicated on the schedule.

532  
533 (6) Two sets of color time-scaled project evaluation and review  
534 technique charts ("PERT") using the activity box template of Logic –  
535 Early Start or such other template designated by the Engineer.

536  
537 If the Contract Documents establish a sequence or order for the  
538 work, the initial progress schedule shall conform to such sequence or  
539 order.

540  
541 **(E) Contractor's Continuing Schedule Submittal Requirements.**  
542 After the acceptance of the initial TSLD and when construction starts, the  
543 Contractor shall submit four plotted progress schedules, two PERT  
544 charts, and reports on all construction activities every two weeks (bi-  
545 weekly). This scheduled bi-weekly submittal shall also include an  
546 updated version of the project schedule in a computerized software format  
547 as specified by the Engineer. The submittal shall have all the  
548 information needed to re-create that time period's TSLD plot and reports.  
549 The bi-weekly submittal shall include, but not limited to, an update of  
550 activities based on actual durations, all new activities and any changes in  
551 duration or start or finish dates of any activity.

552  
553 The Contractor shall submit with every update, in report form  
554 acceptable to the Engineer, a list of changes to the progress schedule  
555 since the previous schedule submittal. The Engineer may change the  
556 frequency of the submittal requirements but may not require a submittal of  
557 the schedule to be more than once a week. The Engineer may  
558 decrease the frequency of the submittal of the bi-weekly schedule.

559  
560 The Contractor shall submit updates of the anticipated work  
561 completion graph, equipment listing, manpower requirement graph or

method statement when requested by the Engineer. Such updates shall be submitted within four calendar days from the date of the request by the Engineer.

The Engineer may withhold progress payment until the Contractor is in compliance with all schedule update requirements

**(F) Float.** All float appearing on a schedule is a shared commodity. Float does not belong to or exist for the exclusive use or benefit of either the State or the Contractor. The State or the Contractor has the opportunity to use available float until it is depleted. Float has no monetary value.

**(G) Scheduled Meetings.** The Contractor shall meet on a bi-weekly basis with the Engineer to review the progress schedule. The Contractor shall have someone attending the meeting that can answer all questions on the TSLD and other schedule related submittals.

**(H) Accelerated TSLD.** The submission by the Contractor to the Department of an accelerated schedule indicating completion before the contract completion date will not constitute an agreement to modify the contract time or completion date, nor will the receipt and acceptance of such a schedule modify the obligation of the Department. The Contractor shall be solely responsible for and shall accept all risks and any delays, other than those that can be directly and solely attributed to the Department, that may materialize during the construction work until the contract completion date is reached. The contract time or completion date is established for the benefit of the Department and cannot be changed without an appropriate change order or final acceptance by the Department. The Department may accept the work before the completion date established by the Contract but is not obligated to do so.

If the TSLD indicates an early completion of the project the Contractor shall upon submittal of the schedule cooperate with the State in explaining how it will be achieved. In addition, the Contractor shall submit the above explanation in writing which shall include the State's part, if any, in achieving the early completion date. Early completion of the project shall not rely on changes to the Contract Documents unless approved by the Engineer.

**(I) Contractor Responsibilities.** The Contractor shall promptly respond to any inquiries from the Engineer regarding any schedule submission. The Contractor shall adjust the schedule to address directives from the Engineer and shall resubmit the TSLD package to the Engineer until the Engineer finds it acceptable.

609 The Contractor shall perform the work according to the submitted  
610 TSLD. The Engineer may require the Contractor to provide additional  
611 work forces and equipment to bring the progress of the work into  
612 conformance with the TSLD at no additional cost to the State whenever  
613 the Engineer determines that the progress of the work does not insure  
614 completion within the specified contract time.  
615

616 **108.08 Weekly Meeting.** In addition to the bi-weekly schedule meetings,  
617 the Contractor shall be available to meet once a week with the State at the time  
618 and place as determined by the Engineer to discuss the work and its progress  
619 including but not limited to, the progress of the project, potential problems,  
620 coordination of work, submittals, erosion control reports, etc. The  
621 Contractor's personnel attending shall have the authority to make decisions and  
622 answer questions.  
623

624 The Contractor shall bring to weekly meetings a detailed work schedule  
625 showing the next three weeks' work. Number of copies of the detailed work  
626 schedule to be submitted will be determined by the Engineer. The three-week  
627 schedule is in addition to the TSLD and shall in no way be considered as a  
628 substitute for the TSLD or vice versa. The three-week schedule shall show:  
629

630 (1) All construction events, traffic control and BMP related activities in  
631 such detail that the Engineer will be able to determine at what location  
632 and type of work will be done for any day for the next three weeks. This  
633 is for the State to use to plan its manpower requirements for that time  
634 period;  
635

636 (2) The duration of all events and delays;  
637

638 (3) The critical path clearly marked in red or marked in a manner that  
639 makes it clearly distinguishable from other paths and is acceptable to the  
640 Engineer;  
641

642 (4) Critical submittals and requests for information (RFI's);  
643

644 (5) The project title, project number, dated created, period the  
645 schedule covers, Contractor's name and creator of the schedule on each  
646 page.  
647

648 Two days prior to each weekly meeting, the Contractor shall  
649 submit a list of outstanding submittals, RFIs and issues that require  
650 discussion.  
651

652 **108.09 Liquidated Damages for Contractor's Delays.** The actual amount  
653 of damages resulting from the Contractor's failure to complete the contract in a  
654 timely manner is difficult to accurately determine. There the amount of such  
655 damages shall be liquidated damages as set forth herein. The State may, at

its discretion deduct the amount from monies due or that may become due under the contract.

**(A) Liquidated Damages for Failure to Open Lanes on Time.** In addition to all other remedies for breach of contract, the Engineer may assess liquidated damages for failure of the Contractor, for any reason, to maintain open lanes to the public in the amount of \$500 for every one-to fifteen-minute increment for each lane not open to the public. The maximum amount assessed per day shall be \$5000. The Engineer will decide the time and liquidated damages assessed.

**(B) Liquidated Damages for Failure to Complete the Work or Portions of the Work on Time.** When the Contractor fails to reach substantial completion of the work for which liquidated damages are specified, within the time or times fixed in the contract or any extension thereof, in addition to all other remedies for breach that may be available to the State, the Contractor shall pay liquidated damages to the State, in the amount of \$5,000 per calendar day.

**(1) Liquidated Damages Upon Termination.** If the State terminates on amount of Contractor's default, liquidated damages may be charged against the defaulting Contractor and its surety until final completion of work.

**(2) Liquidated Damages for Failure to Complete the Punchlist.** The Contractor shall complete the work on any punchlist created after substantial completion, within the contract time or any extension thereof.

When the Contractor fails to complete the work on such punchlist within the contract time or any extension thereof, the Contractor shall pay liquidated damages to the State of 20 percent of the amount of liquidated damages established for failure to substantially complete the work within contract time. Liquidated damages shall not be assessed for the period between

a. Substantial completion of the work and the time the punchlist is delivered to the Contractor,

b. The date of the inspection that results in final acceptance and the receipt by the Contractor of the written notice of the final acceptance.

**(3) Actual Damages Recoverable If Liquidated Damages Deemed Unenforceable.** In the event a court of competent jurisdiction holds that any liquidated damages assessed pursuant to this contract are unenforceable, the State will be entitled to

704 recover its actual damages for Contractor's failure to complete the  
705 work, or any designated portion of the work within the time set by  
706 the contract.  
707

708 **108.10 Suspension of Work.**  
709

710 **(A) Suspension of Work.** The Engineer may, by written order,  
711 suspend the performance of the work, either in whole or in part, for such  
712 periods as the Engineer may deem necessary, for any cause, including  
713 but not limited to:  
714

715 (1) Weather or soil conditions considered unsuitable for  
716 prosecution of the work;  
717

718 (2) Whenever a redesign that may affect the work is deemed  
719 necessary by the Engineer;  
720

721 (3) Unacceptable noise or dust arising from the construction  
722 even if it does violate any law or regulation;  
723

724 (4) Failure on the part of the Contractor to:  
725

726 (a) Correct conditions unsafe for the general public or for  
727 the workers;  
728

729 (b) Carry out orders given by the Engineer;  
730

731 (c) Perform the work in strict compliance with the  
732 provisions of the contract; or  
733

734 (d) Provide adequate supervision on the jobsite.  
735

736 (5) The convenience of the State.  
737

738 **(B) Partial and Total Suspension.** Suspension of work on some  
739 but not all items of work shall be considered a "partial suspension".  
740 Suspension of work on all items shall be considered "total suspension".  
741 The period of suspension shall be computed from the date set out in the  
742 written order for work to cease until the date of the order for work to  
743 resume.  
744

745 **(C) Reimbursement to Contractor.** In the event that the Contractor  
746 is ordered by the Engineer in writing as provided herein to suspend all  
747 work under the contract for the reasons specified in Subsections  
748 108.10(A)(2), 108.10(A)(3), or 108.10(A)(5) of the "Suspension of Work"  
749 paragraph, the Contractor may be reimbursed for actual direct costs  
750 incurred on work at the jobsite, as authorized in writing by the Engineer,

751 including costs expended for the protection of the work. An allowance of 5  
752 percent for indirect categories of delay costs will be paid on any  
753 reimbursed direct costs, including extended branch and home-office  
754 overhead and delay impact costs. No allowance will be made for  
755 anticipated profits. Payment for equipment which is ordered to standby  
756 during such suspension of work shall be made as described in Subsection  
757 109.02(B) - Rental Rates for Idle and Standby Time.  
758

759 **(D) Cost Adjustment.** If the performance of all or part of the work is  
760 suspended for reasons beyond the control of the Contractor except an  
761 adjustment shall be made for any increase in cost of performance of this  
762 contract (excluding profit) necessarily caused by such suspension, and  
763 the contract modified in writing accordingly.  
764

765 However, no adjustment to the contract price shall be made for  
766 any suspension, delay, or interruption:  
767

768 (1) For weather related conditions,  
769

770 (2) To the extent that performance would have been so  
771 suspended, delayed, or interrupted by any other cause, including  
772 the fault or negligence of the Contractor; or  
773

774 (3) For which an adjustment is provided for or excluded under  
775 any other provision of this Contract.  
776

777 **(E) Claims for Adjustment.** Any adjustment in contract price made  
778 shall be determined in accordance with Subsections 104.02 - Changes  
779 and 104.06 - Methods of Price Adjustment.  
780

781 Any claims for such compensation shall be filed in writing with the  
782 Engineer within 30 days after the date of the order to resume work or the  
783 claim will not be considered. The claim shall conform to the  
784 requirements of Subsection 107.15(D) - Making of a Claim. The  
785 Engineer will take the claim under consideration, may make such  
786 investigations as are deemed necessary and will be the sole judge as to  
787 the equitability of the claim. The Engineer's decision will be final.  
788

789 **(F) No Adjustment.** No provision of this clause shall entitle the  
790 Contractor to any adjustments for delays due to failure of its surety, the  
791 cancellation or expiration of any insurance coverage required by the  
792 contract documents, for suspensions made at the request of the  
793 Contractor, for any delay required under the contract, for suspensions,  
794 either partial or whole, made by the Engineer under Subsection  
795 108.10(A)(4) of the "Suspension of work" paragraph.  
796  
797

798 **108.11 Termination of Contract for Cause.**

799  
800 **(A) Default.** If the Contractor refuses or fails to perform the work, or  
801 any separable part thereof, with such diligence as will assure its  
802 completion within the time specified in this contract, or any extension  
803 thereof, fails to complete the work within such time, or commits any other  
804 material breach of this contract, and further fails within seven days after  
805 receipt of written notice from the Engineer to commence and continue  
806 correction of the refusal or failure with diligence and promptness, the  
807 Engineer may, by written notice to the Contractor, declare the Contractor  
808 in breach and terminate the Contractor's right to proceed with the work or  
809 the part of the work as to which there has been delay or other breach of  
810 contract. In such event, the State may take over the work, perform the  
811 same to completion, by contract or otherwise, and may take possession  
812 of, and utilize in completing the work, the materials, appliances, and  
813 plant as may be on the site of the work and necessary therefore.  
814 Whether or not the Contractor's right to proceed with the work is  
815 terminated, the Contractor and the Contractor's sureties shall be liable  
816 for any damage to the State resulting from the Contractor's refusal or  
817 failure to complete the work within the specified time.

818  
819 **(B) Additional Rights and Remedies.** The rights and remedies of  
820 the State provided in this contract are in addition to any other rights and  
821 remedies provided by law.  
822

823 **(C) Costs and Charges.** All costs and charges incurred by the  
824 State, together with the cost of completing the work under contract, will  
825 be deducted from any monies due or which would or might have become  
826 due to the Contractor had it been allowed to complete the work under the  
827 contract. If such expense exceeds the sum which would have been  
828 payable under the contract, then the Contractor and the surety shall be  
829 liable and shall pay the State the amount of the excess.  
830

831 In case of termination, the Engineer will limit any payment to the  
832 Contractor to the part of the contract satisfactorily completed at the time of  
833 termination. Payment will not be made until the work has satisfactorily  
834 been completed and all required documents, including the tax clearance  
835 required by Subsection 109.10 – Final Payment are submitted by the  
836 Contractor. Termination shall not relieve the Contractor or Surety from  
837 liability for liquidated damages.  
838

839 **(D) Erroneous Termination for Cause.** If, after notice of  
840 termination of the Contractor's right to proceed under this section, it is  
841 determined for any reason that good cause did not exist to allow the State  
842 to terminate as provided herein, the rights and obligations of the parties  
843 shall be the same as, and the relief afforded the Contractor shall be

limited to, the provisions contained in Subsection 108.12 – Termination for Convenience.

**108.12 Termination For Convenience.**

**(A) Terminations.** The Director may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Director will give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

**(B) Contractor's Obligations.** The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor shall stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the State's approval. The Engineer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the State. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

**(C) Right to Construction and Goods.** The Engineer may require the Contractor to transfer title and to deliver to the State in the manner and to the extent directed by the Engineer, the following:

(1) Any completed work and

(2) Any partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, drawings, information, and contract rights (hereinafter called "construction material") that the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

(3) The Contractor shall protect and preserve all property in the possession of the Contractor in which the State has an interest. If the Engineer does not elect to retain any such property, the Contractor shall use its best efforts to sell such property and construction materials for the State's account in accordance with the standards of Section 490:2-706, HRS.

**(D) Compensation.**

(1) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience

891 together with cost or pricing data, submitted to the extent required  
892 by Subchapter 15, Chapter 3-122, HAR. If the Contractor fails  
893 to file a termination claim within one year from the effective date of  
894 termination, the Engineer may pay the Contractor, if at all, an  
895 amount set in accordance with Subsection 108.12(D)(3).  
896

897 (2) The Engineer and the Contractor may agree to a settlement  
898 provided the Contractor has filed a termination claim supported by  
899 cost or pricing data submitted as required and that the settlement  
900 does not exceed the total contract price plus settlement costs  
901 reduced by payments previously made by the State, the proceeds  
902 of any sales of construction, supplies, and construction materials  
903 under Subsection 108.12(C)(3), and the proportionate contract  
904 price of the work not terminated.  
905

906 (3) Absent complete agreement, the Engineer will pay the  
907 Contractor the following amounts less any payments previously  
908 made under the contract:  
909

910 (a) The cost of all contract work performed prior to the  
911 effective date of the notice of termination work plus a 5  
912 percent markup on the actual direct costs, including  
913 amounts paid to subcontractor, less amounts paid or to be  
914 paid for completed portions of such work; provided,  
915 however, that if it appears that the Contractor would have  
916 sustained a loss if the entire contract would have been  
917 completed, no markup shall be allowed or included and the  
918 amount of compensation shall be reduced to reflect the  
919 anticipated rate of loss. No anticipated profit or  
920 consequential damage will be due or paid.  
921

922 (b) Subcontractors shall be paid a markup of 10 percent  
923 on their direct job costs incurred to the date of termination.  
924 No anticipated profit or consequential damage will be due or  
925 paid to any subcontractor. These costs must not include  
926 payments made to the Contractor for subcontract work  
927 during the contract period.  
928

929 (c) The total sum to be paid the Contractor shall not  
930 exceed the total contract price reduced by the amount of any  
931 sales of construction supplies, and construction materials.  
932

933 (4) Cost claimed, agreed to, or established by the State shall  
934 be in accordance with Chapter 3-123, HAR.  
935

936 **108.13 Pre-Final and Final Inspections.**  
937

938 **(A) Inspection Requirements.** Before the Engineer undertakes a  
939 final inspection of any work, a pre-final inspection must first be  
940 conducted. The Contractor shall notify the Engineer that the work has  
941 reached substantial completion and is ready for pre-final inspection.  
942

943 **(B) Pre-Final Inspection.** Before notifying the Engineer that the  
944 work has reached substantial completion, the Contractor shall inspect the  
945 project and test all installed items with all of its subcontractors as  
946 appropriate. The Contractor shall also obtain the following documents  
947 as applicable to the work:  
948

949 (1) All written guarantees required by the contract.  
950

951 (2) As-Built Drawing – The Contractor shall prepare and submit  
952 for all work full size 40-inch x 30-inch as-built drawings showing all  
953 locations and any and all changes to the work after the work is  
954 completed. These as-builts will be the official record and shall be  
955 drawn on vellum or other material directed to be used by the  
956 Engineer with professional drafting techniques and standards that  
957 are acceptable to the State.  
958

959 (3) Complete weekly certified payroll records for the Contractor  
960 and Subcontractors.  
961

962 (4) Certificate of Plumbing and Electrical Inspection.  
963

964 (5) Certificate of building occupancy as required.  
965

966 (6) Certificate of Soil and Wood Treatments.  
967

968 (7) Certificate of Water System Chlorination.  
969

970 (8) Certificate of Elevator Inspection, Boiler and Pressure Pipe  
971 Inspection.  
972

973 (9) Maintenance Service Contract and two copies of a list of all  
974 equipment installed.  
975

976 (10) Current Tax clearance. The contractor will be required to  
977 submit an additional tax clearance certificate when the final  
978 payment is made.  
979

980 (11) Any other final items and submittals required by the contract  
981 documents.  
982

983 (C) **Procedure.** When in compliance with the above requirements,  
984 the Contractor shall notify the Engineer in writing that the project has  
985 reached substantial completion and is ready for pre-final inspection.  
986

987 The Engineer will then make a preliminary determination as to  
988 whether or not the project is substantially complete and ready for pre-final  
989 inspection. The Engineer may, in writing, postpone until after the pre-  
990 final inspection the Contractor's submittal of any of the items listed in  
991 Subsection 108.13(B) – Pre-Final Inspection, herein, if in the Engineer's  
992 discretion it is in the interest of the State to do so.  
993

994 If, in the opinion of the Engineer, the project is not substantially  
995 complete, the Engineer will provide the Contractor a punchlist of specific  
996 deficiencies in writing which must be corrected or finished before the work  
997 will be ready for a pre-final inspection. The Engineer may add to or  
998 otherwise modify this punchlist from time to time. The Contractor shall  
999 take immediate action to correct the deficiencies and must repeat all steps  
1000 described above including written notification that the work is ready for  
1001 pre-final inspection.  
1002

1003 After the Engineer is satisfied that the project appears substantially  
1004 complete a pre-final inspection shall be scheduled within ten working days  
1005 after receipt of the Contractor's latest letter of notification that the project  
1006 is ready for pre-final inspection.  
1007

1008 If, as a result of the pre-final inspection, the Engineer determines  
1009 the work is not substantially complete, the Engineer will inform the  
1010 Contractor in writing as to specific deficiencies which must be corrected  
1011 before the work will be ready for another pre-final inspection. If the  
1012 Engineer finds the work is substantially complete but finds deficiencies  
1013 that must be corrected before the work is ready for final inspection, the  
1014 Engineer will prepare in writing and deliver to the Contractor a punchlist  
1015 describing such deficiencies.  
1016

1017 At any time before final acceptance, the Engineer may revoke the  
1018 determination of substantial completion if the Engineer finds that it was  
1019 not warranted and will notify the Contractor in writing the reasons  
1020 therefore together with a description of the deficiencies negating the  
1021 declaration.  
1022

1023 When the date of substantial completion has been determined by  
1024 the State, liquidated damages for the failure to complete the punchlist, if  
1025 due to the State will be assessed in pursuant to Subsection 108.09(B)(2)–  
1026 Liquidated Damages for Failure to Complete the Punchlist.  
1027

1028 (D) **Punchlist; Final Inspection.** Upon receiving a punchlist after  
1029 substantial completion, the Contractor shall promptly devote all required

time, labor, equipment, materials and incidentals to correct and remedy all punchlist deficiencies. The Engineer may add to or otherwise modify this punchlist until final acceptance of the project.

Before final inspection of the work, the Contractor shall clean all ground occupied by the Contractor in connection with the work of all rubbish, excess materials, temporary structures and equipment, and all parts of the work and the worksite must be left in a neat and presentable condition to the satisfaction of the Engineer.

Final inspection will occur within ten working days after the Contractor notifies the Engineer in writing that all punchlist deficiencies remaining after the pre-final inspection have been completed and the Engineer concurs. If the Engineer determines that deficiencies still remain at the final inspection, the work will not be accepted and the Engineer will in writing notify the Contractor of the deficiencies which shall be corrected and the steps above repeated.

If the Contractor fails to correct the deficiencies and complete the work by the established or agreed date, the State may correct the deficiencies by whatever method it deems appropriate and deduct the cost from any payments due the Contractor.

**108.14 Use of Structure or Improvement.** The State has the right to use the structure, equipment, improvement, or any part thereof, at any time after it is considered by the Engineer as available. In the event that the structure, equipment or any part thereof is used by the State before final acceptance, the Contractor is not relieved of its responsibility to protect and preserve all the work until final acceptance.

**108.15 Contractor's Responsibility for Work; Risk of Loss or Damage.** Until the written notice of final acceptance has been received, the Contractor shall take every precaution against loss or damage to any part of the work by the action of the elements or from any other cause whatsoever, whether arising from the performance or from the non-performance of the work. The Contractor shall rebuild, repair, restore and make good all loss or damage to any portion of the work occasioned by any cause before its receipt of the written notice of final acceptance and shall bear the risk and expense thereof.

The risk of loss or damage to the work from any hazard or occurrence that may or may not be covered by a builder's risk policy is that of the Contractor and Surety, unless such risk of loss is placed elsewhere by express language in the contract documents.

**108.16 Final Acceptance.** When the Engineer finds that the project has been satisfactorily completed in compliance with the contract, the Engineer will notify the Contractor in writing of the project's completion and acceptance and

will notify the Contractor in writing of its acceptance effective as of the date of the final inspection. The final acceptance date shall determine end of contract time, liquidated damages for failure to complete the punchlist and commencement of all guaranty periods subject to Subsection 108.17 – Contractor's Responsibility for Work; Risk of loss or Damage.

**108.17 Contractor's Responsibility for Work; Risk of Loss or Damage.**

Until the written notice of final acceptance has been received, the Contractor shall take every precaution against loss or damage to any part of the work by the action of the elements or from any other cause whatsoever, whether arising from the performance or from the non-performance of the work. The Contractor shall rebuild, repair, restore and make good all loss or damage to any portion of the work occasioned by any cause before its receipt of the written notice of final acceptance and shall bear the risk and expense thereof.

The risk of loss or damage to the work from any hazard or occurrence that may or may not be covered by a builder's risk policy is that of the Contractor and Surety, unless such risk of loss is placed elsewhere by express language in the contract documents.

**108.18 Guarantee of Work.**

(1) Regardless of and in addition to any manufacturers' warranties, all work and equipment shall be guaranteed by the Contractor against defects in materials, equipment or workmanship for one year from the date of final acceptance or as otherwise specified in the contract documents.

(2) When the Engineer determines that repairs or replacements of any guaranteed work and equipment is necessary due to materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract, the Contractor shall at no cost to the State and within five working days of receipt of written notice from the State, commence to:

(a) Correct all noted defects and make replacements, as directed by the Engineer, in the equipment and work; and

(b) Repair or replace to new or pre-existing condition any damages resulting from such defective materials, equipment or installation thereof.

(3) The State will be entitled to the benefit of all manufacturers and installers warranties that extend beyond the terms of the Contractor's guaranty regardless of whether or not such extended warranty is required by the contract documents. The Contractor shall prepare and submit all documents required by the providers of such warranties to make them

effective, and submit copies of such documents to the Engineer. If an available extended warranty cannot be transferred or assigned to the State as the ultimate user, the Contractor shall notify the Engineer who may direct that the warranted items be acquired in the name of the State as purchaser.

(4) If a defect is discovered during a guarantee period, all repairs and corrections to the defective items when corrected shall be guaranteed for a new duration equal to the original full guarantee period. The running of the guarantee period shall be suspended for all other work affected by any defect. The guarantee period for all other work affected by any such defect shall restart for its remaining duration upon confirmation by the Engineer that the deficiencies have been repaired or remedied.

(5) Nothing in this section is intended to limit or affect the State's rights and remedies arising from the discovery of latent defects in the work after the expiration of any guarantee period.

**108.19 No Waiver of Legal Rights.** The following will not operate or be considered as a waiver of any portion of the contract, or any power herein reserved, or any right to damages provided herein or by law:

(1) Any payment for or acceptance of the whole or any part of the work, or

(2) Any extension of time, or

(3) Any possession taken by the Engineer.

A waiver of any notice requirement or of any noncompliance with the contract will not be held to be a waiver of any other notice requirement or any other noncompliance with the contract.

**108.20 Final Settlement of Contract.**

(A) **Closing Requirements.** The contract will be considered settled after the project acceptance date and when the following items have been satisfactorily submitted, where applicable:

(1) All written guarantees required by the contract.

(2) Complete and certified weekly payrolls for the Contractor and its Subcontractor's.

(3) Certificate of Plumbing and Electrical Inspection.

(4) Certificate of Building Occupancy.

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(5) Certificate for Soil Treatment and wood Treatment.

(6) Certificate of Water System Chlorination.

(7) Certificate of Elevator Inspection, boiler and Pressure Pipe Installation.

(8) Tax Clearance.

(9) All other documents required by the Contract or by law.

**(B) Failure to Meet Closing Requirements.** The Contractor shall meet the applicable closing requirements within 60 days from the date of Project Acceptance or the agreed to Punchlist complete date. Should the Contractor fail to comply with these requirements, the Engineer may terminate the Contract for cause.

**END OF SECTION 108**