

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
30 **Section Description**
31 **No.**

- 32
33 604 Contract Item No 604 6110 – Adjusting Grated Drop Inlet
34
35 621 All Contract Items under Section 621 - Traffic Control Signs
36
37 629 All Contract Items under Section 629 - Pavement Markings
38

39 No subcontract shall release the Contractor of any liability under
40 the contract and bonds

41
42 **(B) Substituting Subcontractors.** Under Section 103D-302, HRS,
43 the Contractor is required to list the names of persons or firms to be
44 engaged by the Contractor as a subcontractor or joint contractor in the
45 performance of the contract Contractors may enter into subcontracts

only with subcontractors listed in the proposal or with non-listed joint contractors/subcontractors permitted under Subsection 102.06 - Preparation of Proposal. No subcontractor may be added or deleted and substitutions will be allowed only if the subcontractor

- (1) Fails, refuses or is unable to enter into a subcontract, or
- (2) Becomes insolvent, or
- (3) Has its subcontractor's license suspended or revoked, or
- (4) Has defaulted or has otherwise breached the subcontract in connection with the subcontracted work; or
- (5) Is unable to comply with other requirements of law applicable to Contractors, subcontractors and public works projects

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

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

108.02 Notice to Proceed (NTP). A notice to proceed will be given to the Contractor not later than 90 days from the date of execution of the contract. The notice to proceed will indicate the date the Contractor is expected to begin the construction and from which date contract time will be charged.

The Contractor shall begin work within 10 working days from the date in the notice to proceed and shall diligently prosecute the same to completion within the contract time. In the event that the Contractor fails to start the work, the Engineer may terminate the contract in accordance with Subsection 108.11 - Termination of Contract for Cause. The Contractor shall notify the Engineer at least three working days before beginning work.

The Contractor shall notify the Engineer at least 24 hours before restarting work after a suspension of work pursuant to Subsection 108.10 - Suspension of Work.

91 The Contractor shall not begin work before the date in the notice to
92 proceed Any work done prior to the start date established by the notice to
93 proceed will only be considered authorized work and be paid for as provided in
94 the contract after the start date in the notice to proceed is reached
95

96 When construction is started, the Contractor shall work expeditiously and
97 pursue the work diligently until it is complete. If only a portion of the work is to
98 be done in stages, the Contractor shall leave the area safe and usable for the
99 user agency at the end of each stage
100

101 **108.03 Prosecution of Work.** Unless otherwise permitted by the Engineer,
102 in writing the Contractor shall not commence with physical construction unless
103 sufficient materials and equipment are available for either continuous
104 construction or completion of a specified portion of the work
105

106 **108.04 Preconstruction Data Submittal.** The awardee shall submit to the
107 Engineer for information and review the pre-construction data within 15 days
108 from the date of notice of intent to enter the contract Until the items listed
109 below are received and found acceptable by the Engineer, the Contractor shall
110 not commence work unless otherwise authorized to do so in writing and subject
111 to such conditions set by the Engineer No progress payment will be made to
112 the Contractor until the Engineer acknowledges, in writing, receipt of the
113 following preconstruction data submittals acceptable to the Engineer.
114

- 115 (1) List of the Superintendent and other Supervisory Personnel,
116
- 117 (2) Name of person(s) authorized to sign for the Contractor,
118
- 119 (3) Work Schedule,
120
- 121 (4) Initial Progress Schedule (See Subsection 108 07 – Progress
122 Schedule)
123
- 124 (5) Water Pollution and Siltation Control Submittals,
125
- 126 (6) Solid Waste Disposal form,
127
- 128 (7) Tax Rates,
129
- 130 (8) Insurance Rates
131
- 132 (9) Certificate of Insurance satisfactory to the Engineer that the
133 Contractor has in place all insurance coverage required by the contract
134 documents, and
135

136 (10) Schedule of agreed prices

137
138 (11) List of Suppliers

139
140 **108.05 Character and Proficiency of Workers.** The Contractor shall at all
141 times provide adequate supervision and sufficient labor and equipment for
142 prosecuting the work to full completion in the manner and within the time
143 required by the contract. The superintendent and/or delegated representative
144 shall act in a civil and honest manner in his/her dealings with the Engineer and
145 his/her representative and the public in connection with the work

146
147 All workers shall possess the proper license and/or certification, job
148 classification, skill and experience necessary to properly perform the work
149 assigned to them

150
151 The Engineer may direct the removal of any worker(s) who does not carry
152 out the assigned work in a proper and skillful manner or who is disrespectful,
153 intemperate, violent, or disorderly. The worker shall be removed forthwith by
154 the Contractor and will not work again without expressed permission of the
155 Engineer

156
157 **108.06 Contract Time.**

158
159 **(A) Calculation of Contract Time.** When the contract time is on a
160 working day basis, the total contract time allowed for the performance of
161 the work will be the number of working days shown in the contract plus
162 any additional working days authorized in writing as provided hereinafter.
163 The count of elapsed working days to be charged against contract time,
164 will begin from the date of notice to proceed and will continue
165 consecutively to the date of final acceptance

166
167 When the contract is on a calendar day basis, the total contract time
168 allowed for the performance of the work will be the number of calendar
169 days shown in the contract plus any additional calendar days authorized
170 in writing as provided hereinafter. The count of elapsed calendar days
171 to be charged against contract time will begin from the date of notice to
172 proceed and will continue consecutively to the date of final acceptance.
173 This includes the NTP, holidays and non-working days. The Engineer
174 will exclude calendar days elapsing between the orders of the Engineer to
175 suspend work and resume work for suspensions not the fault of the
176 Contractor

177
178 When multiple shifts are used to perform the work, the State will
179 not consider the hours worked over the normal eight working hours per
180 day or night as an additional working day

182 **(B) Modifications of Contract Time.** Whenever the Contractor
183 believes that an extension of contract time is justified, the Contractor
184 shall serve written notice on the Engineer not more than five working days
185 after the occurrence of the event that causes a delay or justifies a
186 contract time extension. Contract time may be adjusted for the following
187 reasons or events, but only if and to the extent the critical path has been
188 impacted
189

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

202 Additional time to perform the extra work will be added to the
203 time allowed in the contract without regard to the date the change
204 directive was issued, even if the contract completion date has
205 passed. A change requiring time issued after contract time has
206 expired will not constitute an excusal or waiver of pre-existing
207 Contractor delay
208

209 **(2) Delay for Permits.** For delays in the routine application
210 and processing time required to obtain necessary permits on the
211 condition that the delay is not caused by the Contractor, and
212 provided that as soon as the delay occurs, the Contractor notifies
213 the Engineer in writing that the permits are not available. Time
214 extensions will be the exclusive relief granted on account of such
215 delays
216

217 **(3) Delays Beyond Contractor's Control.** For delays caused
218 by acts of God, or the public enemy, fire, inclement weather days
219 or adverse conditions resulting therefrom, earthquakes, floods,
220 epidemics, quarantine restrictions, labor disputes impacting the
221 Contractor or the State, freight embargoes and other reasons
222 beyond the Contractor's control, the Contractor may be granted an
223 extension of time provided that.
224

225 **(a)** In the written notice of delay to the Engineer, the
226 Contractor describes possible effects on the completion date
227 of the contract. The description of delays shall.

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

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

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

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

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

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

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

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

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

2. Submit copies of purchase order(s), factory invoice(s), bill(s) of lading, shipping manifest(s),

273 delivery tag(s), and any other documents to support
274 the time extension request
275

276 3. Cite the start and end date of the delay and
277 the days requested therefore The delay shall not
278 exceed the difference between the originally
279 scheduled delivery date versus the actual delivery
280 date
281

282 (c) Time extensions shall be the exclusive relief granted
283 and no additional compensation will be paid the Contractor
284 on account of such delay
285

286 **(5) Delays for Suspension of Work.** When the performance
287 of the work is totally suspended for one or more days (calendar or
288 working days, as appropriate) by order of the Engineer in
289 accordance with Subsections 108 10(A)(1), 108 10(A)(2), or
290 108 10(A)(5) the number of days from the effective date of the
291 Engineer's order to suspend operations to the effective date of the
292 Engineer's order to resume operations shall not be counted as
293 contract time and the contract completion date will be adjusted
294 During periods of partial suspensions of the work, the Contractor
295 will be granted a time extension only if the partial suspension
296 affects the critical path If the Contractor believes that an
297 extension of time is justified for a partial suspension of work, it
298 must request the extension in writing at least five working days
299 before the partial suspension will affect the critical operation(s) in
300 progress The Contractor must show how the critical path was
301 increased based on the status of the work and must also support
302 its claim if requested, with statements from its subcontractors A
303 suspension of work will not constitute a waiver of pre-existing
304 Contractor delay
305

306 **(6) Contractor Caused Delays.** No time extension will be
307 considered for the following
308

309 (a) Delays within the Contractor's control in performing
310 the work caused by the Contractor, subcontractor and/or
311 supplier
312

313 (b) Delays within the Contractor's control in arrival of
314 materials and equipment caused by the Contractor,
315 subcontractor and/or supplier in ordering, and fabricating,
316 delivery
317

318 (c) Delays requested for changes which the Engineer
319 determines unjustifiable due to the lack of supporting
320 evidence or because the change is not on the critical path.

321
322 (d) Delays caused by the failure of the Contractor to
323 submit for review and acceptance by the Engineer, on a
324 timely basis, such as but not limited to shop drawings,
325 descriptive sheets, material samples, and color samples
326 except as covered in Subsection 108 06(B)(3) and
327 108 06(B)(4).

328
329 (e) Failure to follow the procedure within the time allowed
330 qualifying for a time extension

331
332 (7) **Reduction in Time.** If the State deletes or modifies any
333 portion of the work, an appropriate reduction of contract time may
334 be made in accordance with Subsection 104 02 - Changes.

335
336 **108.07 Progress Schedules.**

337
338 (A) **Forms of Schedule.** All schedules shall be submitted using the
339 specific computer program designated in the bid documents. If no such
340 scheduling software program is designated, then all schedules shall be
341 submitted using the latest version of SureTrak Project Manager by
342 Primavera Systems, Inc.

343
344 Schedule submittals shall be as follows:

345
346 (1) **For Contracts \$2,000,000) or less or For Contract Time**
347 **100 Working Days or 140 Calendar Days or less.** For contracts
348 of \$2,000,000 or less or for contract time of 100 working days or
349 140 calendar days or less, the progress schedule will be a Time
350 Scaled Logic Diagram (TSLD). The Contractor shall submit a
351 TSLD submittal package and it shall meet the following
352 requirements and have these essential and distinctive elements

353
354 (a) The major features of work, such as but not limited to
355 BMP installation, grubbing, roadway excavation, structure
356 excavation, structure construction, shown in the
357 chronological order in which the Contractor proposes to
358 work that feature or work and its location on the project.
359 The schedule shall account for normal inclement weather,
360 unusual soil or other conditions that may influence the
361 progress of the work, schedules, and coordination required

by any utility, off or on site fabrications, and other pertinent 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

407 **(2) For Contracts Which Have A Contract Amount More**
408 **Than \$2,000,000 Or Having A Contract Time Of More Than 100**
409 **Working Days Or 140 Calendar Days.** For contracts which have
410 a contract amount more than \$2,000,000 or contract time of more
411 than 100 working days or 140 calendar days, the Contractor shall
412 submit a Timed-Scaled Logic Diagram (TSLD) and it shall meet the
413 following requirements and have these essential and distinctive
414 elements

415
416 (a) The information and requirements listed in A above,

417
418 (b) Additional reports and graphics available from the
419 software as requested by the Engineer,

420
421 (c) Sufficient detail to allow at least weekly monitoring of
422 the Contractor and subcontractor's operations;

423
424 (d) The time scaled schematic shall be on a calendar or
425 working days basis. What will be used shall be determined
426 by how the Contract keeps track of time. It will be the
427 same. Plot the critical calendar dates anticipated,

428
429 (e) Breakdown of activity, such as forming, placing
430 reinforcing steel, concrete pouring and curing, and
431 stripping in concrete construction. Indicate location of work
432 to be done in such detail that it would be easily determined
433 where work would be occurring within approximately 200
434 feet,

435
436 (f) Latest start and/or finish dates for critical phasing,

437
438 (g) Identify responsible subcontractor, supplier, and
439 others for their respective activity;

440
441 (h) No individual activity shall have duration of more than
442 20 calendar days unless requested and approved by the
443 Engineer,

444
445 (i) All activities shall have work breakdown structure
446 codes and activity codes. The activity codes shall have
447 coding that incorporates information for phase, location,
448 who is responsible for doing work and type of operation and
449 activity description and
450

451 (j) Incorporate all physical access and availability
452 restraints
453

454 (B) **Inspection and Testing.** All schedule shall provide reasonable
455 time and opportunity for the Engineer to inspect and test each work
456 activity
457

458 (C) **Engineer's Acceptance of Progress Schedule.** Submittal of and
459 the Engineer's receipt of any progress schedule shall not imply the
460 Engineer's approval of the schedule's breakdown, its individual elements,
461 any critical path that may be shown nor shall it obligate the Department to
462 make its personnel available outside normal working hours or the working
463 hours established by the Contract in order to accommodate such
464 schedule. The Contractor has the risk of all elements (whether or not
465 shown) of the schedule and its execution. No claim for additional
466 compensation and/or time shall be made by the Contractor or recognized
467 by the Engineer for delays during any period for which an acceptable
468 progress schedule or an updated progress schedule as required by
469 Subsection 108 09(E) – Contractor's Continuing Schedule Submittal
470 Requirements had not been submitted. Any acceptance or approval of
471 the schedule shall be for general format only and shall not be deemed an
472 agreement by the Department that the construction means, methods and
473 resources shown on the schedule will result in work that conforms to the
474 contract requirements or that the sequence or duration indicated are
475 approved as feasible
476

477 (D) **Initial Progress Schedule.** The Contractor shall submit an initial
478 progress schedule. The initial progress schedule shall consist of the
479 following
480

481 (1) Four sets of the TSLD schedule,
482

483 (2) All the software files and data to re-create the TSLD in a
484 computerized software format as specified by the Engineer.
485

486 (3) A listing of equipment that is anticipated to be used on the
487 project. Including the type, size, make, year of manufacture,
488 and all information necessary to identify the equipment in the
489 Rental Rate Blue Book for Construction Equipment,
490

491 (4) An anticipated manpower requirement graph plotting
492 contract time and total manpower requirement. This may be
493 superimposed over the payment graph
494

495 (5) A Method Statement that is a detailed narrative describing
496 the work to be done and the method by which the work shall be
497 accomplished for each major activity A major activity is an activity
498 that

499
500 (a) Has a duration longer than five days,

501
502 (b) Is a milestone activity;

503
504 (c) Is a contract item that exceeds \$10,000 on the
505 contract cost proposal

506
507 (d) Is a critical path activity, or

508
509 (e) Is an activity designated as such by the Engineer

510
511 Each Method Statement shall include the following items
512 needed to fulfill the schedule

513
514 (i) Quantity, type, make, and model of equipment,

515
516 (ii) The manpower to do the work, specifying worker
517 classification, and

518
519 (iii) The production rate per eight hour day, needed to
520 meet the time indicated on the schedule

521
522 (6) Two sets of color time-scaled project evaluation and review
523 technique charts ("PERT") using the activity box template of Logic
524 – Early Start or such other template designated by the Engineer

525
526 If the Contract Documents establish a sequence or order for the
527 work, the initial progress schedule shall conform to such sequence or
528 order

529
530 **(E) Contractor's Continuing Schedule Submittal Requirements.**
531 After the acceptance of the initial TSLD and when construction starts, the
532 Contractor shall submit four plotted progress schedules, two PERT
533 charts, and reports on all construction activities every two weeks (bi-
534 weekly) This scheduled bi-weekly submittal shall also include an
535 updated version of the project schedule in a computerized software format
536 as specified by the Engineer. The submittal shall have all the information
537 needed to re-create that time period's TSLD plot and reports The bi-
538 weekly submittal shall include, but not limited to, an update of activities

539 based on actual durations, all new activities and any changes in duration
540 or start or finish dates of any activity
541

542 The Contractor shall submit with every update, in report form
543 acceptable to the Engineer, a list of changes to the progress schedule
544 since the previous schedule submittal. The Engineer may change the
545 frequency of the submittal requirements but may not require a submittal of
546 the schedule to be more than once a week. The Engineer may decrease
547 the frequency of the submittal of the bi-weekly schedule
548

549 The Contractor shall submit updates of the anticipated work
550 completion graph, equipment listing, manpower requirement graph or
551 method statement when requested by the Engineer. Such updates shall
552 be submitted within four calendar days from the date of the request by the
553 Engineer.
554

555 The Engineer may withhold progress payment until the Contractor
556 is in compliance with all schedule update requirements
557

558 **(F) Float.** All float appearing on a schedule is a shared commodity
559 Float does not belong to or exist for the exclusive use or benefit of either
560 the State or the Contractor. The State or the Contractor has the
561 opportunity to use available float until it is depleted. Float has no
562 monetary value
563

564 **(G) Scheduled Meetings.** The Contractor shall meet on a bi-weekly
565 basis with the Engineer to review the progress schedule. The Contractor
566 shall have someone attending the meeting that can answer all questions
567 on the TSLD and other schedule related submittals
568

569 **(H) Accelerated TSLD.** The submission by the Contractor to the
570 Department of an accelerated schedule indicating completion before the
571 contract completion date will not constitute an agreement to modify the
572 contract time or completion date, nor will the receipt and acceptance of
573 such a schedule modify the obligation of the Department. The Contractor
574 shall be solely responsible for and shall accept all risks and any delays,
575 other than those that can be directly and solely attributed to the
576 Department, that may materialize during the construction work until the
577 contract completion date is reached. The contract time or completion
578 date is established for the benefit of the Department and cannot be
579 changed without an appropriate change order or final acceptance by the
580 Department. The Department may accept the work before the completion
581 date established by the Contract but is not obligated to do so
582

583 If the TSLD indicates an early completion of the project the
584 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

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

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

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

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

(2) The duration of all events and delays,

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

(4) Critical submittals and requests for information (RFI's),

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

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

108.09 Liquidated Damages for Contractor's Delays. The actual amount of damages resulting from the Contractor's failure to complete the contract in a timely manner is difficult to accurately determine. There the amount of such 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 \$5,000. 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 \$700 per working 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
recover its actual damages for Contractor's failure to complete the
work, or any designated portion of the work within the time set by
the contract

108.10 Suspension of Work.

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

(1) Weather or soil conditions considered unsuitable for
prosecution of the work,

(2) Whenever a redesign that may affect the work is deemed
necessary by the Engineer,

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

(4) Failure on the part of the Contractor to

(a) Correct conditions unsafe for the general public or for
the workers,

(b) Carry out orders given by the Engineer,

(c) Perform the work in strict compliance with the
provisions of the contract, or

(d) Provide adequate supervision on the jobsite

722 (5) The convenience of the State
723

724 **(B) Partial and Total Suspension.** Suspension of work on some but
725 not all items of work shall be considered a "partial suspension"
726 Suspension of work on all items shall be considered "total suspension"
727 The period of suspension shall be computed from the date set out in the
728 written order for work to cease until the date of the order for work to
729 resume
730

731 **(C) Reimbursement to Contractor.** In the event that the Contractor
732 is ordered by the Engineer in writing as provided herein to suspend all
733 work under the contract for the reasons specified in Subsections
734 108 10(A)(2), 108 10(A)(3), or 108 10(A)(5) of the "Suspension of Work"
735 paragraph, the Contractor may be reimbursed for actual direct costs
736 incurred on work at the jobsite, as authorized in writing by the Engineer,
737 including costs expended for the protection of the work. An allowance of 5
738 percent for indirect categories of delay costs will be paid on any
739 reimbursed direct costs, including extended branch and home-office
740 overhead and delay impact costs. No allowance will be made for
741 anticipated profits. Payment for equipment which is ordered to standby
742 during such suspension of work shall be made as described in Subsection
743 109 02(B) - Rental Rates for Idle and Standby Time
744

745 **(D) Cost Adjustment.** If the performance of all or part of the work is
746 suspended for reasons beyond the control of the Contractor except an
747 adjustment shall be made for any increase in cost of performance of this
748 contract (excluding profit) necessarily caused by such suspension, and
749 the contract modified in writing accordingly
750

751 However, no adjustment to the contract price shall be made for
752 any suspension, delay, or interruption
753

754 (1) For weather related conditions,
755

756 (2) To the extent that performance would have been so
757 suspended, delayed, or interrupted by any other cause, including
758 the fault or negligence of the Contractor, or
759

760 (3) For which an adjustment is provided for or excluded under
761 any other provision of this Contract
762

763 **(E) Claims for Adjustment.** Any adjustment in contract price made
764 shall be determined in accordance with Subsections 104 02 - Changes
765 and 104 06 - Methods of Price Adjustment
766

Any claims for such compensation shall be filed in writing with the Engineer within 30 days after the date of the order to resume work or the claim will not be considered. The claim shall conform to the requirements of Subsection 107 15(D) – Making of a Claim. The Engineer will take the claim under consideration, may make such investigations as are deemed necessary and will be the sole judge as to the equitability of the claim. The Engineer's decision will be final.

(F) No Adjustment. No provision of this clause shall entitle the Contractor to any adjustments for delays due to failure of its surety, the cancellation or expiration of any insurance coverage required by the contract documents, for suspensions made at the request of the Contractor, for any delay required under the contract, for suspensions, either partial or whole, made by the Engineer under Subsection 108 10(A)(4) of the "Suspension of Work" paragraph.

108.11 Termination of Contract for Cause.

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

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

(C) Costs and Charges. All costs and charges incurred by the State, together with the cost of completing the work under contract, will be deducted from any monies due or which would or might have become due to the Contractor had it been allowed to complete the work under the contract. If such expense exceeds the sum which would have been

813 payable under the contract, then the Contractor and the surety shall be
814 liable and shall pay the State the amount of the excess
815

816 In case of termination, the Engineer will limit any payment to the
817 Contractor to the part of the contract satisfactorily completed at the time
818 of termination. Payment will not be made until the work has satisfactorily
819 been completed and all required documents, including the tax clearance
820 required by Subsection 109 10 – Final Payment are submitted by the
821 Contractor. Termination shall not relieve the Contractor or Surety from
822 liability for liquidated damages
823

824 **(D) Erroneous Termination for Cause.** If, after notice of termination
825 of the Contractor's right to proceed under this section, it is determined for
826 any reason that good cause did not exist to allow the State to terminate as
827 provided herein, the rights and obligations of the parties shall be the
828 same as, and the relief afforded the Contractor shall be limited to, the
829 provisions contained in Subsection 108 12 – Termination for
830 Convenience
831

832 **108.12 Termination For Convenience.**

833

834 **(A) Terminations.** The Director may, when the interests of the State
835 so require, terminate this contract in whole or in part, for the
836 convenience of the State. The Director will give written notice of the
837 termination to the Contractor specifying the part of the contract terminated
838 and when termination becomes effective
839

840 **(B) Contractor's Obligations.** The Contractor shall incur no further
841 obligations in connection with the terminated work and on the date set in
842 the notice of termination the Contractor shall stop work to the extent
843 specified. The Contractor shall also terminate outstanding orders and
844 subcontracts as they relate to the terminated work. The Contractor shall
845 settle the liabilities and claims arising out of the termination of
846 subcontracts and orders connected with the terminated work subject to
847 the State's approval. The Engineer may direct the Contractor to assign
848 the Contractor's right, title, and interest under terminated orders or
849 subcontracts to the State. The Contractor must still complete the work
850 not terminated by the notice of termination and may incur obligations as
851 necessary to do so
852

853 **(C) Right to Construction and Goods.** The Engineer may require
854 the Contractor to transfer title and to deliver to the State in the manner
855 and to the extent directed by the Engineer, the following
856

857 **(1)** Any completed work and

858 (2) Any partially completed construction, goods, materials,
859 parts, tools, dies, jigs, fixtures, drawings, information, and
860 contract rights (hereinafter called "construction material") that the
861 Contractor has specifically produced or specially acquired for the
862 performance of the terminated part of this contract
863

864 (3) The Contractor shall protect and preserve all property in the
865 possession of the Contractor in which the State has an interest
866 If the Engineer does not elect to retain any such property, the
867 Contractor shall use its best efforts to sell such property and
868 construction materials for the State's account in accordance with
869 the standards of Section 490 2-706, HRS.
870

871 (D) **Compensation.**
872

873 (1) The Contractor shall submit a termination claim specifying
874 the amounts due because of the termination for convenience
875 together with cost or pricing data, submitted to the extent required
876 by Subchapter 15, Chapter 3-122, HAR. If the Contractor fails to
877 file a termination claim within one year from the effective date of
878 termination, the Engineer may pay the Contractor, if at all, an
879 amount set in accordance with Subsection 108 12(D)(3)
880

881 (2) The Engineer and the Contractor may agree to a settlement
882 provided the Contractor has filed a termination claim supported by
883 cost or pricing data submitted as required and that the settlement
884 does not exceed the total contract price plus settlement costs
885 reduced by payments previously made by the State, the proceeds
886 of any sales of construction, supplies, and construction materials
887 under Subsection 108 12(C)(3), and the proportionate contract
888 price of the work not terminated
889

890 (3) Absent complete agreement, the Engineer will pay the
891 Contractor the following amounts less any payments previously
892 made under the contract
893

894 (a) The cost of all contract work performed prior to the
895 effective date of the notice of termination work plus a 5
896 percent markup on the actual direct costs, including
897 amounts paid to subcontractor, less amounts paid or to be
898 paid for completed portions of such work, provided,
899 however, that if it appears that the Contractor would have
900 sustained a loss if the entire contract would have been
901 completed, no markup shall be allowed or included and the
902 amount of compensation shall be reduced to reflect the

903 anticipated rate of loss No anticipated profit or
904 consequential damage will be due or paid
905

906 (b) Subcontractors shall be paid a markup of 10 percent
907 on their direct job costs incurred to the date of termination
908 No anticipated profit or consequential damage will be due or
909 paid to any subcontractor These costs must not include
910 payments made to the Contractor for subcontract work
911 during the contract period
912

913 (c) The total sum to be paid the Contractor shall not
914 exceed the total contract price reduced by the amount of any
915 sales of construction supplies, and construction materials
916

917 (4) Cost claimed, agreed to, or established by the State shall
918 be in accordance with Chapter 3-123, HAR
919

920 **108.13 Pre-Final and Final Inspections.**
921

922 (A) **Inspection Requirements.** Before the Engineer undertakes a
923 final inspection of any work, a pre-final inspection must first be
924 conducted The Contractor shall notify the Engineer that the work has
925 reached substantial completion and is ready for pre-final inspection.
926

927 (B) **Pre-Final Inspection.** Before notifying the Engineer that the work
928 has reached substantial completion, the Contractor shall inspect the
929 project and test all installed items with all of its subcontractors as
930 appropriate The Contractor shall also obtain the following documents
931 as applicable to the work
932

933 (1) All written guarantees required by the contract.
934

935 (2) **As-Built Drawing –** The Contractor shall prepare and submit
936 for all work full size 40-inch x 30-inch as-built drawings showing all
937 locations and any and all changes to the work after the work is
938 completed These as-builts will be the official record and shall be
939 drawn on vellum or other material directed to be used by the
940 Engineer with professional drafting techniques and standards that
941 are acceptable to the State
942

943 (3) Complete weekly certified payroll records for the Contractor
944 and Subcontractors
945

946 (4) Certificate of Plumbing and Electrical Inspection
947

- 948 (5) Certificate of building occupancy as required
949
950 (6) Certificate of Soil and Wood Treatments
951
952 (7) Certificate of Water System Chlorination
953
954 (8) Certificate of Elevator Inspection, Boiler and Pressure Pipe
955 Inspection
956
957 (9) Maintenance Service Contract and two copies of a list of all
958 equipment installed
959
960 (10) Current Tax clearance The contractor will be required to
961 submit an additional tax clearance certificate when the final
962 payment is made
963
964 (11) Any other final items and submittals required by the contract
965 documents
966

967 **(C) Procedure.** When in compliance with the above requirements,
968 the Contractor shall notify the Engineer in writing that the project has
969 reached substantial completion and is ready for pre-final inspection
970

971 The Engineer will then make a preliminary determination as to
972 whether or not the project is substantially complete and ready for pre-final
973 inspection The Engineer may, in writing, postpone until after the pre-
974 final inspection the Contractor's submittal of any of the items listed in
975 Subsection 108 13(B) – Pre-Final Inspection, herein, if in the Engineer's
976 discretion it is in the interest of the State to do so
977

978 If, in the opinion of the Engineer, the project is not substantially
979 complete, the Engineer will provide the Contractor a punchlist of specific
980 deficiencies in writing which must be corrected or finished before the work
981 will be ready for a pre-final inspection The Engineer may add to or
982 otherwise modify this punchlist from time to time. The Contractor shall
983 take immediate action to correct the deficiencies and must repeat all
984 steps described above including written notification that the work is ready
985 for pre-final inspection
986

987 After the Engineer is satisfied that the project appears substantially
988 complete a pre-final inspection shall be scheduled within ten working
989 days after receipt of the Contractor's latest letter of notification that the
990 project is ready for pre-final inspection
991

992 If, as a result of the pre-final inspection, the Engineer determines
993 the work is not substantially complete, the Engineer will inform the
994 Contractor in writing as to specific deficiencies which must be corrected
995 before the work will be ready for another pre-final inspection. If the
996 Engineer finds the work is substantially complete but finds deficiencies
997 that must be corrected before the work is ready for final inspection, the
998 Engineer will prepare in writing and deliver to the Contractor a punchlist
999 describing such deficiencies

1000
1001 At any time before final acceptance, the Engineer may revoke the
1002 determination of substantial completion if the Engineer finds that it was
1003 not warranted and will notify the Contractor in writing the reasons
1004 therefore together with a description of the deficiencies negating the
1005 declaration
1006

1007 When the date of substantial completion has been determined by
1008 the State, liquidated damages for the failure to complete the punchlist, if
1009 due to the State will be assessed in pursuant to Subsection 108 09(B)(2)–
1010 Liquidated Damages for Failure to Complete the Punchlist
1011

1012 **(D) Punchlist; Final Inspection.** Upon receiving a punchlist after
1013 substantial completion, the Contractor shall promptly devote all required
1014 time, labor, equipment, materials and incidentals to correct and remedy
1015 all punchlist deficiencies. The Engineer may add to or otherwise modify
1016 this punchlist until final acceptance of the project
1017

1018 Before final inspection of the work, the Contractor shall clean all
1019 ground occupied by the Contractor in connection with the work of all
1020 rubbish, excess materials, temporary structures and equipment, and all
1021 parts of the work and the worksite must be left in a neat and presentable
1022 condition to the satisfaction of the Engineer.
1023

1024 Final inspection will occur within ten working days after the
1025 Contractor notifies the Engineer in writing that all punchlist deficiencies
1026 remaining after the pre-final inspection have been completed and the
1027 Engineer concurs. If the Engineer determines that deficiencies still
1028 remain at the final inspection, the work will not be accepted and the
1029 Engineer will in writing notify the Contractor of the deficiencies which shall
1030 be corrected and the steps above repeated.
1031

1032 If the Contractor fails to correct the deficiencies and complete the
1033 work by the established or agreed date, the State may correct the
1034 deficiencies by whatever method it deems appropriate and deduct the
1035 cost from any payments due the Contractor
1036

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.

1083 (1) Regardless of and in addition to any manufacturers' warranties, all
1084 work and equipment shall be guaranteed by the Contractor against
1085 defects in materials, equipment or workmanship for one year from the
1086 date of final acceptance or as otherwise specified in the contract
1087 documents
1088

1089 (2) When the Engineer determines that repairs or replacements of any
1090 guaranteed work and equipment is necessary due to materials,
1091 equipment, or workmanship which are inferior, defective, or not in
1092 accordance with the terms of the contract, the Contractor shall at no cost
1093 to the State and within five working days of receipt of written notice from
1094 the State, commence to
1095

1096 (a) Correct all noted defects and make replacements, as
1097 directed by the Engineer, in the equipment and work, and
1098

1099 (b) Repair or replace to new or pre-existing condition any
1100 damages resulting from such defective materials, equipment or
1101 installation thereof
1102

1103 (3) The State will be entitled to the benefit of all manufacturers and
1104 installers warranties that extend beyond the terms of the Contractor's
1105 guaranty regardless of whether or not such extended warranty is required
1106 by the contract documents. The Contractor shall prepare and submit all
1107 documents required by the providers of such warranties to make them
1108 effective, and submit copies of such documents to the Engineer. If an
1109 available extended warranty cannot be transferred or assigned to the
1110 State as the ultimate user, the Contractor shall notify the Engineer who
1111 may direct that the warranted items be acquired in the name of the State
1112 as purchaser
1113

1114 (4) If a defect is discovered during a guarantee period, all repairs and
1115 corrections to the defective items when corrected shall be guaranteed for
1116 a new duration equal to the original full guarantee period. The running of
1117 the guarantee period shall be suspended for all other work affected by
1118 any defect. The guarantee period for all other work affected by any such
1119 defect shall restart for its remaining duration upon confirmation by the
1120 Engineer that the deficiencies have been repaired or remedied
1121

1122 (5) Nothing in this section is intended to limit or affect the State's rights
1123 and remedies arising from the discovery of latent defects in the work after
1124 the expiration of any guarantee period
1125

1126 **108.19 No Waiver of Legal Rights.** The following will not operate or be
1127 considered as a waiver of any portion of the contract, or any power herein
1128 reserved, or any right to damages provided herein or by law:
1129

1130 (1) Any payment for or acceptance of the whole or any part of the
1131 work, or

1132
1133 (2) Any extension of time, or

1134
1135 (3) Any possession taken by the Engineer
1136

1137 A waiver of any notice requirement or of any noncompliance with the
1138 contract will not be held to be a waiver of any other notice requirement or any
1139 other noncompliance with the contract
1140

1141 **108.20 Final Settlement of Contract.**
1142

1143 (A) **Closing Requirements.** The contract will be considered settled
1144 after the project acceptance date and when the following items have been
1145 satisfactorily submitted, where applicable
1146

1147 (1) All written guarantees required by the contract
1148

1149 (2) Complete and certified weekly payrolls for the Contractor
1150 and its Subcontractor's
1151

1152 (3) Certificate of Plumbing and Electrical Inspection
1153

1154 (4) Certificate of Building Occupancy
1155

1156 (5) Certificate for Soil Treatment and wood Treatment
1157

1158 (6) Certificate of Water System Chlorination
1159

1160 (7) Certificate of Elevator Inspection, boiler and Pressure Pipe
1161 Installation
1162

1163 (8) Tax Clearance
1164

1165 (9) All other documents required by the Contract or by law.
1166
1167
1168
1169
1170

1171 **(B) Failure to Meet Closing Requirements.** The Contractor shall
1172 meet the applicable closing requirements within 60 days from the date of
1173 Project Acceptance or the agreed to Punchlist complete date Should
1174 the Contractor fail to comply with these requirements, the Engineer may
1175 terminate the Contract for cause "

1176
1177
1178
1179

END OF SECTION