

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.

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11 Subject to the provisions of HRS Chapter 103D-302, 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:

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Section No.	Description
613	Contract Item No. 613.0110 under Section 613 – Centerline and Reference Survey Monument
621A	All Contract Items under Section 621A - Traffic Control Guide Signs
621B	All Contract Items under Section 621B - Traffic Control Regulatory, Warning, and Miscellaneous Signs
621C	All Contract Items under Section 621C - Markers
629	All Contract Items under Section 629 - Pavement Markings
645	Contract Item No. 645.0100 under Section 645 – Work Zone Traffic Control

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

(B) Substituting Subcontractors. Under HRS Chapter 103D-302, the Contractor is required to list the names of persons or firms to be engaged by the Contractor as a subcontractor or joint contractor in the 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 Contractor'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.

Bids that do not comply with the above requirements may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the subcontractor or joint contractor is equal to or less than one percent of the total bid amount.

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 issued to the Contractor. It shall establish the date the Contractor is expected to start work and from which contract time will commence.

The Engineer will consult with the Contractor in an effort to set a mutually agreeable notice to proceed date. When the notice to proceed date is set by

mutual agreement, Contractor shall have no claim for delay impact costs resulting from the issuance of the notice to proceed for such date.

In the absence of an agreed notice to proceed date, the Engineer will issue a notice to proceed to the Contractor. In the event that the Engineer establishes a starting date that is more than 90 days after the effective date of the contract the Contractor may submit a claim in accordance with Subsection 107.15 – Disputes and Claims for increased labor and material costs which are directly attributable to the delay beyond the first 90 days. The Engineer may suspend the contract before issuing the notice to proceed, in which case the Contractor's remedies are exclusively those set forth in Subsection 108.11 – Suspension of Work.

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 108.12 – 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 108.11 – Suspension of Work.

The Contractor shall not begin work before the date in the notice to proceed. Any work done prior to the notice to proceed date will be considered unauthorized work. If the Engineer does not direct that the unauthorized work be removed, it shall be paid for after the notice to proceed date and only if it is acceptable.

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

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

108.04 Preconstruction Data Submittal. The awardee shall submit to the Engineer for information and review the pre-construction data within 15 days from the date of notice of intent to enter the contract. Until the items listed below are received and found acceptable by the Engineer, the Contractor shall not commence work unless otherwise authorized to do so in writing and subject to such conditions set by the Engineer. No progress payment will be made to

the Contractor until the Engineer acknowledges, in writing, receipt of the following preconstruction data submittals acceptable to the Engineer:

- (1) List of the Superintendent and other Supervisory Personnel;
- (2) Name of person(s) authorized to sign for the Contractor;
- (3) Work Schedule;
- (4) Initial Progress Schedule (See Subsection 108.07 – Progress Schedule)
- (5) Water Pollution and Siltation Control Submittals;
- (6) Solid Waste Disposal form;
- (7) Tax Rates;
- (8) Insurance Rates
- (9) Certificate of Insurance satisfactory to the Engineer that the Contractor has in place all insurance coverage required by the contract documents; and
- (10) Schedule of agreed prices; and
- (11) List of Suppliers.

108.04 Character and Proficiency of Workers. The Contractor shall at all times provide adequate supervision and sufficient labor and equipment for prosecuting the work to full completion in the manner and within the time required by the contract. The superintendent and all other representatives of the Contractor shall act in a civil and honest manner in all dealings with the Engineer, all other State officials and representatives, and the public, in connection with the work.

All workers shall possess the proper license or certification, job classification, skill, training, and experience necessary to properly perform the work assigned to them.

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

108.06 Contract Time.

188 **(A) Calculation of Contract Time.** When the contract time is on a
189 working day basis, the total contract time allowed for the performance of
190 the work will be the number of working days shown in the contract plus
191 any additional working days authorized in writing as provided hereinafter.
192 The count of elapsed working days to be charged against contract time,
193 will begin from the date of notice to proceed and will continue
194 consecutively to the date of final acceptance. When multiple shifts are
195 used to perform the work, the State will not consider the hours worked
196 over the normal eight working hours per day or night as an additional
197 working day.

198
199 When the contract is on a calendar day basis, the total contract time
200 allowed for the performance of the work will be the number of days shown
201 in the contract plus any additional days authorized in writing as provided
202 hereinafter. The count of elapsed days to be charged against contract
203 time will begin from the date of notice to proceed and will continue
204 consecutively to the date of final acceptance. The Engineer will exclude
205 days elapsing between the orders of the Engineer to suspend work and
206 resume work for suspensions not the fault of the Contractor.
207

208 **(B) Modifications of Contract Time.** Whenever the Contractor
209 believes that an extension of contract time is justified, the Contractor shall
210 serve written notice on the Engineer not more than five working days after
211 the occurrence of the event that causes a delay or justifies a contract
212 time extension. Contract time may be adjusted for the following reasons
213 or events, but only if and to the extent the critical path has been affected:
214

215 **(1) Changes in the Work, Additional Work, and Delays**
216 **Caused by the State.** If the Contractor believes that an extension
217 of time is justified on account of any act or omission by the State,
218 and is not adequately provided for in a field order or change order,
219 it must request the additional time as provided above. At the
220 request of the Engineer, the Contractor must show how the critical
221 path will be affected and must also support the time extension
222 request with schedules, as well as statements from its
223 subcontractors, suppliers, or manufacturers, as necessary.
224 Claims for compensation for any altered or additional work will be
225 determined pursuant to Subsection 104.02 – Changes.
226

227 Additional time to perform the extra work will be added to the
228 time allowed in the contract without regard to the date the change
229 directive was issued, even if the contract completion date has
230 passed. A change requiring time issued after contract time has
231 expired will not constitute an excusal or waiver of pre-existing
232 Contractor delay.
233

234 **(2) Delay for Permits.** For delays in the routine application
235 and processing time required to obtain necessary permits,
236 including permits to be obtained from State agencies, on the
237 condition that the delay is not caused by the Contractor, and
238 provided that as soon as the delay occurs, the Contractor notifies
239 the Engineer in writing that the permits are not available. Time
240 extensions will be the exclusive relief granted on account of such
241 delays.

242
243 **(3) Delays Beyond Contractor's Control.** For delays caused
244 by acts of God, a public enemy, fire, inclement weather days or
245 adverse conditions resulting therefrom, earthquakes, floods,
246 epidemics, quarantine restrictions, labor disputes impacting the
247 Contractor or the State, freight embargoes and other reasons
248 beyond the Contractor's control, the Contractor may be granted an
249 extension of time provided that:

250
251 **(a)** In the written notice of delay to the Engineer, the
252 Contractor describes possible effects on the completion date
253 of the contract. The description of delays shall:

- 254
255 1. State specifically the reason or reasons for the
256 delay and fully explain in a detailed chronology how
257 the delay affects the critical path.
- 258
259 2. Include copies of pertinent documentation to
260 support the time extension request.
- 261
262 3. Cite the anticipated period of delay and the time
263 extension requested.
- 264
265 4. State either that the above circumstances have
266 been cleared and normal working conditions restored
267 as of a certain day or that the above circumstances
268 will continue to prevent completion of the project.

269
270 **(b)** The Contractor shall notify the Engineer in writing
271 when the delay ends. Time extensions will be the exclusive
272 relief granted and no additional compensation will be paid
273 the Contractor for such delays.

274
275 **(4) Delays in Delivery of Materials or Equipment.** For delays
276 in delivery of materials or equipment which occur as a result of
277 unforeseeable causes beyond the control and without fault of the
278 Contractor, its subcontractor(s) or supplier(s), time extensions
279 shall be the exclusive relief granted and no additional
280 compensation will be paid the Contractor on account of such delay.

The delay shall not exceed the difference between the originally scheduled delivery date and the actual delivery date. 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 critical path.

(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 regarding the delay. The Contractor must justify the delay as follows:

1. State specifically all reasons for the delay. Explain in a detailed chronology the effect of the delay on the critical path.

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

3. Cite the start and end date of the delay and the time extension requested.

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

327 (6) **Contractor Caused Delays.** No time extension will be
328 granted under the following circumstances:

329 (a) Delays within the Contractor's control in performing
330 the work caused by the Contractor, subcontractor, supplier,
331 or any combination thereof.

332 (b) Delays within the Contractor's control in arrival of
333 materials and equipment caused by the Contractor,
334 subcontractor, supplier, or any combination thereof, in
335 ordering, fabricating, and delivery.

336 (c) Delays requested for changes which do not affect the
337 critical path.

338 (d) Delays caused by the failure of the Contractor to
339 make submittals in a timely manner for review and
340 acceptance by the Engineer, such as but not limited to shop
341 drawings, descriptive sheets, material samples, and color
342 samples except as covered in Subsection 108.06(B)(3) and
343 108.06(B)(4).

344 (e) Delays caused by the failure to submit sufficient
345 information and data in a timely manner in the proper form in
346 order to obtain necessary permits related to the work.

347 (f) Failure to follow the procedure within the time allowed
348 by contract to request a time extension.

349 (g) Failure of the Contractor to provide evidence
350 sufficient to support the time extension request.

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

354 **108.07 Progress Schedules.**

355 (A) **Forms of Schedule.** All schedules shall be submitted using the
356 specific computer program designated in the bid documents. If no such
357 scheduling software program is designated, then all schedules shall be
358 submitted using the latest version of SureTrak Project Manager by
359 Primavera Systems, Inc.

360 Schedule submittals shall be as follows:

373 **(1) For Contracts \$2,000,000) or less or For Contract Time**
374 **100 Working Days or 140 Calendar Days or less.** For contracts
375 of \$2,000,000 or less or for contract time of 100 working days or
376 140 calendar days or less, the progress schedule will be a Time
377 Scaled Logic Diagram (TSLD). The Contractor shall submit a
378 TSLD submittal package and it shall meet the following
379 requirements and have these essential and distinctive elements:
380

381 **(a)** The major features of work, such as but not limited to
382 BMP installation, grubbing, roadway excavation, structure
383 excavation, structure construction, shown in the
384 chronological order in which the Contractor proposes to work
385 that feature or work and its location on the project. The
386 schedule shall account for normal inclement weather,
387 unusual soil or other conditions that may influence the
388 progress of the work, schedules, and coordination required
389 by any utility, off or on site fabrications, and other pertinent
390 factors that relate to progress;
391

392 **(b)** All features listed or not listed in the contract
393 documents that the Contractor considers a controlling factor
394 for the timely completion of the contract work;
395

396 **(c)** The time span and sequence of the activities or
397 events for each feature, and its interrelationship and
398 interdependencies in time and logic to other features in
399 order to complete the project;
400

401 **(d)** The total anticipated time necessary to complete work
402 required by the contract;
403

404 **(e)** A chronological listing of critical intermediate dates or
405 time periods for features or milestone or phases that can
406 affect timely completion of the project;
407

408 **(f)** Major activities related to the location on the project;
409

410 **(g)** Non-construction activities, such as submittal and
411 acceptance periods for shop drawings and material,
412 procurement, testing, fabrication, mobilization, and
413 demobilization or order dates of long lead material;
414

415 **(h)** Set schedule logic for out of sequence activities to
416 retain logic. In addition, open ends shall be non-critical;
417

418 **(i)** Show target bars for all activities:
419

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

(a) The information and requirements listed in A above;

(b) Additional reports and graphics available from the software as requested by the Engineer;

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

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

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

(f) Latest start and finish dates for critical path activities;

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

(h) No individual activity shall have duration of more than 20 calendar days unless requested and approved by the Engineer;

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

(j) Incorporate all physical access and availability restraints.

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

(C) Engineer's Acceptance of Progress Schedule. The submittal of, and the Engineer's receipt of any progress schedule shall not be deemed an agreement to modify any terms or conditions of the contract. Any modifications to the contract terms and conditions that appear in or may be inferred from an acceptable schedule will not be valid or enforceable unless and until the Engineer exercises discretion to issue an appropriate change order. Nor shall any submittal or receipt imply the Engineer's approval of the schedule's breakdown, its individual elements, any critical path that may be shown nor shall it obligate the Department to make its personnel available outside normal working hours or the working hours established by the Contract in order to accommodate such schedule. The Contractor has the risk of all elements (whether or not shown) of the schedule and its execution. No claim for additional compensation or time, or both shall be made by the Contractor or recognized by the Engineer for delays during any period for which an acceptable progress schedule or an updated progress schedule as required by Subsection 108.08(E) – Contractor's Continuing Schedule Submittal Requirements had not been submitted. Any acceptance or approval of the schedule shall be for general format only and shall not be deemed an agreement by the Department that the construction means, methods and resources shown on the schedule will result in work that conforms to the contract requirements or that the sequences or durations indicated are feasible.

(D) Initial Progress Schedule. The Contractor shall submit an initial progress schedule. The initial progress schedule shall consist of the following:

(1) Four sets of the TSLD schedule,

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

516
517 (3) A listing of equipment that is anticipated to be used on the
518 project. Including the type, size, make, year of manufacture,
519 and all information necessary to identify the equipment in the
520 Rental Rate Blue Book for Construction Equipment,

521
522 (4) An anticipated manpower requirement graph plotting
523 contract time and total manpower requirement. This may be
524 superimposed over the payment graph.

525
526 (5) A Method Statement that is a detailed narrative describing
527 the work to be done and the method by which the work shall be
528 accomplished for each major activity. A major activity is an activity
529 that:

530
531 (a) Has a duration longer than five days;

532
533 (b) Is a milestone activity;

534
535 (c) Is a contract item that exceeds \$10,000 on the
536 contract cost proposal

537
538 (d) Is a critical path activity; or

539
540 (e) Is an activity designated as such by the Engineer.

541
542 Each Method Statement shall include the following items
543 needed to fulfill the schedule:

544
545 (i) Quantity, type, make, and model of equipment,

546
547 (ii) The manpower to do the work, specifying worker
548 classification, and

549
550 (iii) The production rate per eight hour day, needed to
551 meet the time indicated on the schedule.

552
553 (6) Two sets of color time-scaled project evaluation and review
554 technique charts ("PERT") using the activity box template of Logic –
555 Early Start or such other template designated by the Engineer.

556
557 If the Contract Documents establish a sequence or order for the
558 work, the initial progress schedule shall conform to such sequence or
559 order.

561 **(E) Contractor's Continuing Schedule Submittal Requirements.**

562 After the acceptance of the initial TSLD and when construction starts, the
563 Contractor shall submit four plotted progress schedules, two PERT
564 charts, and reports on all construction activities every two weeks (bi-
565 weekly). This scheduled bi-weekly submittal shall also include an updated
566 version of the project schedule in a computerized software format as
567 specified by the Engineer. The submittal shall have all the information
568 needed to re-create that time period's TSLD plot and reports. The bi-
569 weekly submittal shall include, but not limited to, an update of activities
570 based on actual durations, all new activities and any changes in duration
571 or start or finish dates of any activity.
572

573 The Contractor shall submit with every update, in report form
574 acceptable to the Engineer, a list of changes to the progress schedule
575 since the previous schedule submittal. The Engineer may change the
576 frequency of the submittal requirements but may not require a submittal of
577 the schedule to be more than once a week. The Engineer may decrease
578 the frequency of the submittal of the bi-weekly schedule.
579

580 The Contractor shall submit updates of the anticipated work
581 completion graph, equipment listing, manpower requirement graph or
582 method statement when requested by the Engineer. Such updates shall
583 be submitted within four calendar days from the date of the request by the
584 Engineer.
585

586 The Engineer may withhold progress payment until the Contractor
587 is in compliance with all schedule update requirements
588

589 **(F) Float.** All float appearing on a schedule is a shared commodity.
590 Float does not belong to or exist for the exclusive use or benefit of either
591 the State or the Contractor. The State or the Contractor has the
592 opportunity to use available float until it is depleted. Float has no
593 monetary value.
594

595 **(G) Scheduled Meetings.** The Contractor shall meet on a bi-weekly
596 basis with the Engineer to review the progress schedule. The Contractor
597 shall have someone attending the meeting that can answer all questions
598 on the TSLD and other schedule related submittals.
599

600 **(H) Accelerated Schedule; Early Completion.** If the Contractor
601 submits an accelerated schedule (shorter than the contract time), the
602 Engineer's review and acceptance of an accelerated schedule does not
603 constitute an agreement or obligation by the State to modify the contract
604 time or completion date. The Contractor is solely responsible for and
605 shall accept all risks and any delays, other than those that can be directly
606 and solely attributable to the State that may occur during the work, until
607 the contract completion date. The contract time or completion date is

established for the benefit of the State and cannot be changed without an appropriate change order or final acceptance by the State. The State may accept the work before the completions date is established, 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.

(l) 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 in accordance with 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 increase in contract price or contract time 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 Failure to Complete the Work or Portions of the Work on Time. The actual amount of damages resulting from the Contractor's failure to complete the contract in a timely manner is difficult to accurately determine. Therefore 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.

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 \$1,000.00 per working day.

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

(B) 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

(1) Substantial completion of the work and the time the punchlist is delivered to the Contractor,

(2) The date of the completion of punchlist as determined by the Engineer and the date of the successful final inspection, and

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

(C) 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 Rental Fees for Unauthorized Lane Closure or Occupancy. In addition to all other remedies available to the State for Contractor's breach of the terms of the contract, the Engineer will assess the rental fees in the amount of \$500 for every one-to fifteen-minute increment for each roadway lane closed to the public use or occupied beyond the time periods authorized in the contract or by the Engineer. The maximum amount assessed per day shall be \$5,000. The State may, at its discretion, deduct the amount from monies due or that may become due under the contract. The rental fee may be waived in whole or part if the Engineer determines that the unauthorized period of lane closure or occupancy was due to factors beyond the control of the Contractor. Equipment breakdown is not a cause to waive liquidated damages.

108.11 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.

(5) The convenience of the State.

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

(C) Reimbursement to Contractor. In the event that the Contractor is ordered by the Engineer in writing as provided herein to suspend all work under the contract for the reasons specified in Subsections 108.11(A)(2), 108.11(A)(3), or 108.11(A)(5) of the "Suspension of Work" paragraph, the Contractor may be reimbursed for actual direct costs incurred on work at the jobsite, as authorized in writing by the Engineer, including costs expended for the protection of the work. An allowance of 5 percent for indirect categories of delay costs will be paid on any reimbursed direct costs, including extended branch and home-office overhead and delay impact costs. No allowance will be made for anticipated profits. Payment for equipment which is ordered to standby during such suspension of work shall be made as described in Subsection 109.02(B) - Rental Rates for Idle and Standby Time.

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

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

(1) For weather related conditions,

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

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

795 **(E) Claims for Adjustment.** Any adjustment in contract price made
796 shall be determined in accordance with Subsections 104.02 – Changes
797 and 104.06 – Methods of Price Adjustment.
798

799 Any claims for such compensation shall be filed in writing with the
800 Engineer within 30 days after the date of the order to resume work or the
801 claim will not be considered. The claim shall conform to the requirements
802 of Subsection 107.15(D) – Making of a Claim. The Engineer will take the
803 claim under consideration, may make such investigations as are deemed
804 necessary and will be the sole judge as to the equitability of the claim.
805 The Engineer's decision will be final.
806

807 **(F) No Adjustment.** No provision of this clause shall entitle the
808 Contractor to any adjustments for delays due to failure of its surety, the
809 cancellation or expiration of any insurance coverage required by the
810 contract documents, for suspensions made at the request of the
811 Contractor, for any delay required under the contract, for suspensions,
812 either partial or whole, made by the Engineer under Subsection
813 108.10(A)(4) of the "Suspension of work" paragraph.
814

815 **108.12 Termination of Contract for Cause.**

816
817 **(A) Default.** If the Contractor refuses or fails to perform the work, or
818 any separable part thereof, with such diligence as will assure its
819 completion within the time specified in this contract, or any extension
820 thereof, or commits any other material breach of this contract, and
821 further fails within seven days after receipt of written notice from the
822 Engineer to commence and continue correction of the refusal or failure
823 with diligence and promptness, the Engineer may, by written notice to
824 the Contractor, declare the Contractor in breach and terminate the
825 Contractor's right to proceed with the work or the part of the work as to
826 which there has been a delay or other breach of contract. In such event,
827 the State may take over the work, perform the same to completion, by
828 contract or otherwise, and may take possession of, and utilize in
829 completing the work, the materials, appliances, and plant as may be on
830 the site of the work and necessary therefore. Whether or not the
831 Contractor's right to proceed with the work is terminated, the Contractor
832 and the Contractor's sureties shall be liable for any damage to the State
833 resulting from the Contractor's refusal or failure to complete the work
834 within the specified time.
835

836 **(B) Additional Rights and Remedies.** The rights and remedies of
837 the State provided in this contract are in addition to any other rights and
838 remedies provided by law.
839

840 **(C) Costs and Charges.** All costs and charges incurred by the State,
841 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 payable under the contract, then the Contractor and the surety shall be liable and shall pay the State the amount of the excess.

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

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

108.13 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:

889 (1) Any completed work and

890
891 (2) Any partially completed construction, goods, materials,
892 parts, tools, dies, jigs, fixtures, drawings, information, and
893 contract rights (hereinafter called "construction material") that the
894 Contractor has specifically produced or specially acquired for the
895 performance of the terminated part of this contract.

896
897 (3) The Contractor shall protect and preserve all property in the
898 possession of the Contractor in which the State has an interest.
899 If the Engineer does not elect to retain any such property, the
900 Contractor shall use its best efforts to sell such property and
901 construction materials for the State's account in accordance with
902 the standards of HRS Chapter 490:2-706.

903
904 **(D) Compensation.**

905
906 (1) The Contractor shall submit a termination claim specifying
907 the amounts due because of the termination for convenience
908 together with cost or pricing data, submitted to the extent required
909 by Subchapter 15, Chapter 3-122, HAR. If the Contractor fails
910 to file a termination claim within one year from the effective date of
911 termination, the Engineer may pay the Contractor, if at all, an
912 amount set in accordance with Subsection 108.12(D)(3).

913
914 (2) The Engineer and the Contractor may agree to a settlement
915 provided the Contractor has filed a termination claim supported by
916 cost or pricing data submitted as required and that the settlement
917 does not exceed the total contract price plus settlement costs
918 reduced by payments previously made by the State, the proceeds
919 of any sales of construction, supplies, and construction materials
920 under Subsection 108.12(C)(3), and the proportionate contract
921 price of the work not terminated.

922
923 (3) Absent complete agreement, the Engineer will pay the
924 Contractor the following amounts less any payments previously
925 made under the contract:

926
927 (a) The cost of all contract work performed prior to the
928 effective date of the notice of termination work plus a 5
929 percent markup on the actual direct costs, including
930 amounts paid to subcontractor, less amounts paid or to be
931 paid for completed portions of such work; provided,
932 however, that if it appears that the Contractor would have
933 sustained a loss if the entire contract would have been
934 completed, no markup shall be allowed or included and the
935 amount of compensation shall be reduced to reflect the

936 anticipated rate of loss. No anticipated profit or
937 consequential damage will be due or paid.
938

939 (b) Subcontractors shall be paid a markup of 10 percent
940 on their direct job costs incurred to the date of termination.
941 No anticipated profit or consequential damage will be due or
942 paid to any subcontractor. These costs must not include
943 payments made to the Contractor for subcontract work
944 during the contract period.
945

946 (c) The total sum to be paid the Contractor shall not
947 exceed the total contract price reduced by the amount of any
948 sales of construction supplies, and construction materials.
949

950 (4) Cost claimed, agreed to, or established by the State shall
951 be in accordance with Chapter 3-123, HAR.
952

953 **108.14 Pre-Final and Final Inspections.** 954

955 (A) **Inspection Requirements.** Before the Engineer undertakes a final
956 inspection of any work, a pre-final inspection must first be conducted.
957 The Contractor shall notify the Engineer that the work has reached
958 substantial completion and is ready for pre-final inspection.
959

960 (B) **Pre-Final Inspection.** Before notifying the Engineer that the
961 work has reached substantial completion, the Contractor shall inspect the
962 project and test all installed items with all of its subcontractors as
963 appropriate. The Contractor shall also submit the following documents
964 as applicable to the work:
965

- 966 (1) All written guarantees required by the contract.
967
- 968 (2) Two accepted final field-posted drawings accepted by the
969 Engineer in accordance with Section 648 – Field-Posted Drawings.
970
- 971 (3) Complete weekly certified payroll records for the Contractor
972 and Subcontractors.
973
- 974 (4) Certificate of Plumbing and Electrical Inspection.
975
- 976 (5) Certificate of building occupancy as required.
977
- 978 (6) Certificate of Soil and Wood Treatments.
979
- 980 (7) Certificate of Water System Chlorination.
981

982 (8) Certificate of Elevator Inspection, Boiler and Pressure Pipe
983 Inspection.

984
985 (9) Maintenance Service Contract and two copies of a list of all
986 equipment installed.

987
988 (10) Current Tax clearance. The contractor will be required to
989 submit an additional tax clearance certificate when the final
990 payment is made.

991
992 (11) Any other final items and submittals required by the contract
993 documents.

994
995 (C) **Procedure.** When in compliance with the above requirements,
996 the Contractor shall notify the Engineer in writing that the project has
997 reached substantial completion and is ready for pre-final inspection.

998
999 The Engineer will then make a preliminary determination as to
1000 whether or not the project is substantially complete and ready for pre-final
1001 inspection. The Engineer may, in writing, postpone until after the pre-
1002 final inspection the Contractor's submittal of any of the items listed in
1003 Subsection 108.13(B) – Pre-Final Inspection, herein, if in the Engineer's
1004 discretion it is in the interest of the State to do so.

1005
1006 If, in the opinion of the Engineer, the project is not substantially
1007 complete, the Engineer will provide the Contractor a punchlist of specific
1008 deficiencies in writing which must be corrected or finished before the work
1009 will be ready for a pre-final inspection. The Engineer may add to or
1010 otherwise modify this punchlist from time to time. The Contractor shall
1011 take immediate action to correct the deficiencies and must repeat all steps
1012 described above including written notification that the work is ready for
1013 pre-final inspection.

1014
1015 After the Engineer is satisfied that the project appears substantially
1016 complete a pre-final inspection shall be scheduled within ten working days
1017 after receipt of the Contractor's latest letter of notification that the project
1018 is ready for pre-final inspection.

1019
1020 If, as a result of the pre-final inspection, the Engineer determines
1021 the work is not substantially complete, the Engineer will inform the
1022 Contractor in writing as to specific deficiencies which must be corrected
1023 before the work will be ready for another pre-final inspection. If the
1024 Engineer finds the work is substantially complete but finds deficiencies
1025 that must be corrected before the work is ready for final inspection, the
1026 Engineer will prepare in writing and deliver to the Contractor a punchlist
1027 describing such deficiencies.

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

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

(D) Punchlist; Final Inspection. Upon receiving a punchlist after 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.

108.15 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.

108.16 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 resulting from 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.

108.17 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 108.16 – Contractor's Responsibility for Work; Risk of Loss or Damage.

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 increase in contract price or contract time 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.

- 1170 (5) Certificate for Soil Treatment and wood Treatment.
1171
1172 (6) Certificate of Water System Chlorination.
1173
1174 (7) Certificate of Elevator Inspection, boiler and Pressure Pipe
1175 Installation.
1176
1177 (8) Tax Clearance.
1178
1179 (9) All other documents required by the Contract or by law.
1180

1181 **(B) Failure to Meet Closing Requirements.** The Contractor shall
1182 meet the applicable closing requirements within 60 days from the date of
1183 Project Acceptance or the agreed to Punchlist complete date. Should the
1184 Contractor fail to comply with these requirements, the Engineer may
1185 terminate the Contract for cause."
1186
1187
1188
1189
1190
1191

END OF SECTION 108