

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

2
3 **"SECTION 108 - PROSECUTION AND PROGRESS**

4
5 **108.01 Subcontracts.**

6
7 **(A) Subcontract Requirements.** Nothing contained in the contract
8 documents shall create a contractual relationship between the State and
9 any subcontractor.

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

14
15 The Contractor shall not sublet, sell, transfer, assign, or
16 otherwise dispose of any duty the Contractor may have pursuant to the
17 contract without the written consent of the State.

18
19 The Contractor shall perform with his/her own organization, work
20 amounting to not less than 30 percent of the total contract cost, except
21 that any items designated by the State in the contract as 'specialty items'.
22 Where an entire item is subcontracted, the value of work subcontracted
23 will be based on the contract item bid price. When a portion of an item
24 is subcontracted, the value of work subcontracted will be estimated by
25 the Engineer and be based on the cost of such portion of the contract
26 items.

27
28 The 'Specialty Items' of work for this project are as follows:

29

Section No.	Description
401	Contract Item No. 401.0100 under Section 401 - Asphalt Concrete Pavement
503	All Contract Items under Section 503 – Concrete End Posts
606	All Contract Items under Section 606 - Guardrail
621	All Contract Items under Section 621 - Traffic Control Signs

41

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

44
45 **(B) Substituting Subcontractors.** Under Section 103D-302, HRS,
46 the Contractor is required to list the names of persons or firms to be
47 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 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.

94 The Contractor shall not begin work before the date in the notice to
95 proceed. Any work done prior to the start date established by the notice to
96 proceed will only be considered authorized work and be paid for as provided in
97 the contract after the start date in the notice to proceed is reached.
98

99 When construction is started, the Contractor shall work expeditiously and
100 pursue the work diligently until it is complete. If only a portion of the work is to
101 be done in stages, the Contractor shall leave the area safe and usable for the
102 user agency at the end of each stage.
103

104 **108.03 Prosecution of Work.** Unless otherwise permitted by the Engineer,
105 in writing the Contractor shall not commence with physical construction unless
106 sufficient materials and equipment are available for either continuous
107 construction or completion of a specified portion of the work.
108

109 **108.04 Preconstruction Data Submittal.** The awardee shall submit to the
110 Engineer for information and review the pre-construction data within 15 days
111 from the date of notice of intent to enter the contract. Until the items listed
112 below are received and found acceptable by the Engineer, the Contractor shall
113 not commence work unless otherwise authorized to do so in writing and subject
114 to such conditions set by the Engineer. No progress payment will be made to
115 the Contractor until the Engineer acknowledges, in writing, receipt of the
116 following preconstruction data submittals acceptable to the Engineer:
117

- 118 (1) List of the Superintendent and other Supervisory Personnel;
- 119
- 120 (2) Name of person(s) authorized to sign for the Contractor;
- 121
- 122 (3) Work Schedule;
- 123
- 124 (4) Initial Progress Schedule (See Subsection 108.07 – Progress
- 125 Schedule)
- 126
- 127 (5) Water Pollution and Siltation Control Submittals;
- 128
- 129 (6) Solid Waste Disposal form;
- 130
- 131 (7) Tax Rates;
- 132
- 133 (8) Insurance Rates
- 134
- 135 (9) Certificate of Insurance satisfactory to the Engineer that the
- 136 Contractor has in place all insurance coverage required by the contract
- 137 documents; and
- 138
- 139 (10) Schedule of agreed prices

140 (11) List of Suppliers.
141

142 **108.05 Character and Proficiency of Workers.** The Contractor shall at all
143 times provide adequate supervision and sufficient labor and equipment for
144 prosecuting the work to full completion in the manner and within the time
145 required by the contract. The superintendent and/or delegated representative
146 shall act in a civil and honest manner in his/her dealings with the Engineer and
147 his/her representative and the public in connection with the work.
148

149 All workers shall possess the proper license and/or certification, job
150 classification, skill and experience necessary to properly perform the work
151 assigned to them.
152

153 The Engineer may direct the removal of any worker(s) who does not carry
154 out the assigned work in a proper and skillful manner or who is disrespectful,
155 intemperate, violent, or disorderly. The worker shall be removed forthwith by
156 the Contractor and will not work again without expressed permission of the
157 Engineer.
158

159 **108.06 Contract Time.**
160

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

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

180 When multiple shifts are used to perform the work, the State will
181 not consider the hours worked over the normal eight working hours per
182 day or night as an additional working day.
183

184 **(B) Modifications of Contract Time.** Whenever the Contractor
185 believes that an extension of contract time is justified, the Contractor
186 shall serve written notice on the Engineer not more than five working days

after the occurrence of the event that causes a delay or justifies a contract time extension. Contract time may be adjusted for the following reasons or events, but only if and to the extent the critical path has been impacted:

(1) Changes in the Work, Additional Work, and Delays Caused by the State.

If the Contractor believes that an extension of time is justified on account of any act or omission by the State, and is not adequately provided for in a field order or change order, it must request the additional time as provided above. At the request of the Engineer, the Contractor must show how the time of performance for the critical path will be affected and must also support the time extension request with schedules and statements from its subcontractors, suppliers, and/or manufacturers. Claims for compensation for any altered or additional work will be determined pursuant to Subsection 104.02 – Changes.

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

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

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

(a) In the written notice of delay to the Engineer, the Contractor describes possible effects on the completion date 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

STP-050-1(27)

108-5a

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

280 3. Cite the start and end date of the delay and
281 the days requested therefore. The delay shall not
282 exceed the difference between the originally
283 scheduled delivery date versus the actual delivery
284 date.
285

286 (c) Time extensions shall be the exclusive relief granted
287 and no additional compensation will be paid the Contractor
288 on account of such delay.
289

290 (5) **Delays for Suspension of Work.** When the performance
291 of the work is totally suspended for one or more days (calendar or
292 working days, as appropriate) by order of the Engineer in
293 accordance with Subsections 108.10(A)(1), 108.10(A)(2), or
294 108.10(A)(5) the number of days from the effective date of the
295 Engineer's order to suspend operations to the effective date of the
296 Engineer's order to resume operations shall not be counted as
297 contract time and the contract completion date will be adjusted.
298 During periods of partial suspensions of the work, the Contractor
299 will be granted a time extension only if the partial suspension
300 affects the critical path. If the Contractor believes that an
301 extension of time is justified for a partial suspension of work, it
302 must request the extension in writing at least five working days
303 before the partial suspension will affect the critical operation(s) in
304 progress. The Contractor must show how the critical path was
305 increased based on the status of the work and must also support
306 its claim if requested, with statements from its subcontractors. A
307 suspension of work will not constitute a waiver of pre-existing
308 Contractor delay.
309

310 (6) **Contractor Caused Delays.** No time extension will be
311 considered for the following:
312

313 (a) Delays within the Contractor's control in performing
314 the work caused by the Contractor, subcontractor and/or
315 supplier.
316

317 (b) Delays within the Contractor's control in arrival of
318 materials and equipment caused by the Contractor,
319 subcontractor and/or supplier in ordering, and fabricating,
320 delivery.
321

322 (c) Delays requested for changes which the Engineer
323 determines unjustifiable due to the lack of supporting
324 evidence or because the change is not on the critical path.
325

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

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

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

108.07 Progress Schedules.

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

Schedule submittals shall be as follows:

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

(a) The major features of work, such as but not limited to BMP installation, grubbing, roadway excavation, structure excavation, structure construction, shown in the chronological order in which the Contractor proposes to work that feature or work and its location on the project. The schedule shall account for normal inclement weather, unusual soil or other conditions that may influence the 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;

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

377
378 (d) The total anticipated time necessary to complete work
379 required by the contract;

380
381 (e) A chronological listing of critical intermediate dates or
382 time periods for features or milestone or phases that can
383 affect timely completion of the project;

384
385 (f) Major activities related to the location on the project;

386
387 (g) Non-construction activities, such as submittal and
388 acceptance periods for shop drawings and material,
389 procurement, testing, fabrication, mobilization, and
390 demobilization or order dates of long lead material;

391
392 (h) Set schedule logic for out of sequence activities to
393 retain logic. In addition, open ends shall be non-critical;

394
395 (i) Show target bars for all activities:

396
397 (j) Vertical and horizontal sight lines both major and
398 minor shall be used as well as a separator line between
399 groups. The Engineer shall determine frequency and style.

400
401 (k) The file name, print date, revision number, data and
402 project title and number shall be included in the title block;
403 and

404
405 (l) Have columns with the appropriate data in them for
406 activity ID, Description, Original Duration, Remaining
407 Duration, Early Start, Early Finish, Total Float, Percent
408 Complete, Resources. The Resource column shall list
409 who is responsible for the work to be done in the activity.
410 These columns shall be to the left of the bar chart.

411
412 **(2) For Contracts Which Have A Contract Amount More**
413 **Than \$2,000,000 Or Having A Contract Time Of More Than 100**
414 **Working Days Or 140 Calendar Days.** For contracts which
415 have a contract amount more than \$2,000,000 or contract time of
416 more than 100 working days or 140 calendar days, the Contractor
417 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/or finish dates for critical phasing;
- (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.

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

481
482 **(D) Initial Progress Schedule.** The Contractor shall submit an initial
483 progress schedule. The initial progress schedule shall consist of the
484 following:

- 485
486 (1) Four sets of the TSLD schedule,
487
488 (2) All the software files and data to re-create the TSLD in a
489 computerized software format as specified by the Engineer.
490
491 (3) A listing of equipment that is anticipated to be used on the
492 project. Including the type, size, make, year of manufacture,
493 and all information necessary to identify the equipment in the
494 Rental Rate Blue Book for Construction Equipment,
495
496 (4) An anticipated manpower requirement graph plotting
497 contract time and total manpower requirement. This may be
498 superimposed over the payment graph.
499
500 (5) A Method Statement that is a detailed narrative describing
501 the work to be done and the method by which the work shall be
502 accomplished for each major activity. A major activity is an
503 activity that:
504
505 (a) Has a duration longer than five days;
506
507 (b) Is a milestone activity;
508

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

(d) Is a critical path activity; or

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

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

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

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

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

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

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

(E) Contractor's Continuing Schedule Submittal Requirements.

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

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

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

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

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

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

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

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

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

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

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 **\$1,000** for every one-to fifteen-minute increment for each lane not open to the public. The maximum amount assessed per day shall be **\$10,000**. 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 **\$600** 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

697 recover its actual damages for Contractor's failure to complete the
698 work, or any designated portion of the work within the time set by
699 the contract.
700

701 **108.10 Suspension of Work.**
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703 **(A) Suspension of Work.** The Engineer may, by written order,
704 suspend the performance of the work, either in whole or in part, for such
705 periods as the Engineer may deem necessary, for any cause, including
706 but not limited to:
707

708 **(1)** Weather or soil conditions considered unsuitable for
709 prosecution of the work;
710

711 **(2)** Whenever a redesign that may affect the work is deemed
712 necessary by the Engineer;
713

714 **(3)** Unacceptable noise or dust arising from the construction
715 even if it does violate any law or regulation;
716

717 **(4)** Failure on the part of the Contractor to:
718

719 **(a)** Correct conditions unsafe for the general public or for
720 the workers;
721

722 **(b)** Carry out orders given by the Engineer;
723

724 **(c)** Perform the work in strict compliance with the
725 provisions of the contract; or
726

727 **(d)** Provide adequate supervision on the jobsite.
728

729 **(5)** The convenience of the State.
730

731 **(B) Partial and Total Suspension.** Suspension of work on some but
732 not all items of work shall be considered a "partial suspension".
733 Suspension of work on all items shall be considered "total suspension".
734 The period of suspension shall be computed from the date set out in the
735 written order for work to cease until the date of the order for work to
736 resume.
737

738 **(C) Reimbursement to Contractor.** In the event that the Contractor
739 is ordered by the Engineer in writing as provided herein to suspend all
740 work under the contract for the reasons specified in Subsections
741 108.10(A)(2), 108.10(A)(3), or 108.10(A)(5) of the "Suspension of Work"
742 paragraph, the Contractor may be reimbursed for actual direct costs

743 incurred on work at the jobsite, as authorized in writing by the Engineer,
744 including costs expended for the protection of the work. An allowance of 5
745 percent for indirect categories of delay costs will be paid on any
746 reimbursed direct costs, including extended branch and home-office
747 overhead and delay impact costs. No allowance will be made for
748 anticipated profits. Payment for equipment which is ordered to standby
749 during such suspension of work shall be made as described in Subsection
750 109.02(B) - Rental Rates for Idle and Standby Time.

751
752 **(D) Cost Adjustment.** If the performance of all or part of the work is
753 suspended for reasons beyond the control of the Contractor except an
754 adjustment shall be made for any increase in cost of performance of this
755 contract (excluding profit) necessarily caused by such suspension, and
756 the contract modified in writing accordingly.

757
758 However, no adjustment to the contract price shall be made for
759 any suspension, delay, or interruption:

760
761 (1) For weather related conditions,

762
763 (2) To the extent that performance would have been so
764 suspended, delayed, or interrupted by any other cause, including
765 the fault or negligence of the Contractor; or

766
767 (3) For which an adjustment is provided for or excluded under
768 any other provision of this Contract.

769
770 **(E) Claims for Adjustment.** Any adjustment in contract price made
771 shall be determined in accordance with Subsections 104.02 - Changes
772 and 104.06 - Methods of Price Adjustment.

773
774 Any claims for such compensation shall be filed in writing with the
775 Engineer within 30 days after the date of the order to resume work or the
776 claim will not be considered. The claim shall conform to the requirements
777 of Subsection 107.15(D) - Making of a Claim. The Engineer will take the
778 claim under consideration, may make such investigations as are deemed
779 necessary and will be the sole judge as to the equitability of the claim.
780 The Engineer's decision will be final.

781
782 **(F) No Adjustment.** No provision of this clause shall entitle the
783 Contractor to any adjustments for delays due to failure of its surety, the
784 cancellation or expiration of any insurance coverage required by the
785 contract documents, for suspensions made at the request of the
786 Contractor, for any delay required under the contract, for suspensions,
787 either partial or whole, made by the Engineer under Subsection
788 108.10(A)(4) of the "Suspension of work" paragraph.

790 **108.11 Termination of Contract for Cause.**

791
792 **(A) Default.** If the Contractor refuses or fails to perform the work, or
793 any separable part thereof, with such diligence as will assure its
794 completion within the time specified in this contract, or any extension
795 thereof, fails to complete the work within such time, or commits any other
796 material breach of this contract, and further fails within seven days after
797 receipt of written notice from the Engineer to commence and continue
798 correction of the refusal or failure with diligence and promptness, the
799 Engineer may, by written notice to the Contractor, declare the Contractor
800 in breach and terminate the Contractor's right to proceed with the work or
801 the part of the work as to which there has been delay or other breach of
802 contract. In such event, the State may take over the work, perform the
803 same to completion, by contract or otherwise, and may take possession
804 of, and utilize in completing the work, the materials, appliances, and
805 plant as may be on the site of the work and necessary therefore.
806 Whether or not the Contractor's right to proceed with the work is
807 terminated, the Contractor and the Contractor's sureties shall be liable
808 for any damage to the State resulting from the Contractor's refusal or
809 failure to complete the work within the specified time.
810

811 **(B) Additional Rights and Remedies.** The rights and remedies of
812 the State provided in this contract are in addition to any other rights and
813 remedies provided by law.
814

815 **(C) Costs and Charges.** All costs and charges incurred by the
816 State, together with the cost of completing the work under contract, will
817 be deducted from any monies due or which would or might have become
818 due to the Contractor had it been allowed to complete the work under the
819 contract. If such expense exceeds the sum which would have been
820 payable under the contract, then the Contractor and the surety shall be
821 liable and shall pay the State the amount of the excess.
822

823 In case of termination, the Engineer will limit any payment to the
824 Contractor to the part of the contract satisfactorily completed at the time
825 of termination. Payment will not be made until the work has satisfactorily
826 been completed and all required documents, including the tax clearance
827 required by Subsection 109.10 – Final Payment are submitted by the
828 Contractor. Termination shall not relieve the Contractor or Surety from
829 liability for liquidated damages.
830

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

provisions contained in Subsection 108.12 – Termination for Convenience.

108.12 Termination For Convenience.

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

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

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

(1) Any completed work and

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

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

(D) Compensation.

881 (1) The Contractor shall submit a termination claim specifying
882 the amounts due because of the termination for convenience
883 together with cost or pricing data, submitted to the extent required
884 by Subchapter 15, Chapter 3-122, HAR. If the Contractor fails
885 to file a termination claim within one year from the effective date of
886 termination, the Engineer may pay the Contractor, if at all, an
887 amount set in accordance with Subsection 108.12(D)(3).
888

889 (2) The Engineer and the Contractor may agree to a settlement
890 provided the Contractor has filed a termination claim supported by
891 cost or pricing data submitted as required and that the settlement
892 does not exceed the total contract price plus settlement costs
893 reduced by payments previously made by the State, the proceeds
894 of any sales of construction, supplies, and construction materials
895 under Subsection 108.12(C)(3), and the proportionate contract
896 price of the work not terminated.
897

898 (3) Absent complete agreement, the Engineer will pay the
899 Contractor the following amounts less any payments previously
900 made under the contract:
901

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

914 (b) Subcontractors shall be paid a markup of 10 percent
915 on their direct job costs incurred to the date of termination.
916 No anticipated profit or consequential damage will be due or
917 paid to any subcontractor. These costs must not include
918 payments made to the Contractor for subcontract work
919 during the contract period.
920

921 (c) The total sum to be paid the Contractor shall not
922 exceed the total contract price reduced by the amount of any
923 sales of construction supplies, and construction materials.
924

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

927 **108.13 Pre-Final and Final Inspections.**

928
929 **(A) Inspection Requirements.** Before the Engineer undertakes a
930 final inspection of any work, a pre-final inspection must first be
931 conducted. The Contractor shall notify the Engineer that the work has
932 reached substantial completion and is ready for pre-final inspection.

933
934 **(B) Pre-Final Inspection.** Before notifying the Engineer that the
935 work has reached substantial completion, the Contractor shall inspect the
936 project and test all installed items with all of its subcontractors as
937 appropriate. The Contractor shall also obtain the following documents
938 as applicable to the work:

939
940 **(1)** All written guarantees required by the contract.

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

949
950 **(3)** Complete weekly certified payroll records for the Contractor
951 and Subcontractors.

952
953 **(4)** Certificate of Plumbing and Electrical Inspection.

954
955 **(5)** Certificate of building occupancy as required.

956
957 **(6)** Certificate of Soil and Wood Treatments.

958
959 **(7)** Certificate of Water System Chlorination.

960
961 **(8)** Certificate of Elevator Inspection, Boiler and Pressure Pipe
962 Inspection.

963
964 **(9)** Maintenance Service Contract and two copies of a list of all
965 equipment installed.

966
967 **(10)** Current Tax clearance. The contractor will be required to
968 submit an additional tax clearance certificate when the final
969 payment is made.

970
971 **(11)** Any other final items and submittals required by the contract
972 documents.

973 **(C) Procedure.** When in compliance with the above requirements,
974 the Contractor shall notify the Engineer in writing that the project has
975 reached substantial completion and is ready for pre-final inspection.
976

977 The Engineer will then make a preliminary determination as to
978 whether or not the project is substantially complete and ready for pre-final
979 inspection. The Engineer may, in writing, postpone until after the pre-
980 final inspection the Contractor's submittal of any of the items listed in
981 Subsection 108.13(B) – Pre-Final Inspection, herein, if in the Engineer's
982 discretion it is in the interest of the State to do so.
983

984 If, in the opinion of the Engineer, the project is not substantially
985 complete, the Engineer will provide the Contractor a punchlist of specific
986 deficiencies in writing which must be corrected or finished before the work
987 will be ready for a pre-final inspection. The Engineer may add to or
988 otherwise modify this punchlist from time to time. The Contractor shall
989 take immediate action to correct the deficiencies and must repeat all
990 steps described above including written notification that the work is ready
991 for pre-final inspection.
992

993 After the Engineer is satisfied that the project appears substantially
994 complete a pre-final inspection shall be scheduled within ten working
995 days after receipt of the Contractor's latest letter of notification that the
996 project is ready for pre-final inspection.
997

998 If, as a result of the pre-final inspection, the Engineer determines
999 the work is not substantially complete, the Engineer will inform the
1000 Contractor in writing as to specific deficiencies which must be corrected
1001 before the work will be ready for another pre-final inspection. If the
1002 Engineer finds the work is substantially complete but finds deficiencies
1003 that must be corrected before the work is ready for final inspection, the
1004 Engineer will prepare in writing and deliver to the Contractor a punchlist
1005 describing such deficiencies.
1006

1007 At any time before final acceptance, the Engineer may revoke the
1008 determination of substantial completion if the Engineer finds that it was
1009 not warranted and will notify the Contractor in writing the reasons
1010 therefore together with a description of the deficiencies negating the
1011 declaration.
1012

1013 When the date of substantial completion has been determined by
1014 the State, liquidated damages for the failure to complete the punchlist, if
1015 due to the State will be assessed in pursuant to Subsection 108.09(B)(2)–
1016 Liquidated Damages for Failure to Complete the Punchlist.
1017

1018 **(D) Punchlist; Final Inspection.** Upon receiving a punchlist after
1019 substantial completion, the Contractor shall promptly devote all required

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

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

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

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

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

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

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

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

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

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

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

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

108.18 Guarantee of Work.

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

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

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

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

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

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

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

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

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

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

(2) Any extension of time, or

(3) Any possession taken by the Engineer.

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

108.20 Final Settlement of Contract.

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

(1) All written guarantees required by the contract.

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

(3) Certificate of Plumbing and Electrical Inspection.

- 1160 (4) Certificate of Building Occupancy.
1161
1162 (5) Certificate for Soil Treatment and wood Treatment.
1163
1164 (6) Certificate of Water System Chlorination.
1165
1166 (7) Certificate of Elevator Inspection, boiler and Pressure Pipe
1167 Installation.
1168
1169 (8) Tax Clearance.
1170
1171 (9) All other documents required by the Contract or by law.
1172

1173 **(B) Failure to Meet Closing Requirements.** The Contractor shall
1174 meet the applicable closing requirements within 60 days from the date of
1175 Project Acceptance or the agreed to Punchlist complete date. Should
1176 the Contractor fail to comply with these requirements, the Engineer may
1177 terminate the Contract for cause.
1178
1179
1180
1181
1182
1183

END OF SECTION 108