

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 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 is  
24 subcontracted, the value of work subcontracted will be estimated by the  
25 Engineer and be based on the cost of such portion of the contract items.  
26

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

Section No.	Description
604	Contract Item No. 604.5300 under Section 604 – Manholes, Inlets and Catch Basins
609A	Contract Item No. 609A.2214 under Section 609A – Portland Cement Concrete Curb and Gutter
613	Contract Item No. 613.0110 under Section 613 – Centerline and Reference Survey Monuments
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

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.

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.

**108.05 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  
217 extension of time is justified on account of any act or omission by  
218 the State, and is not adequately provided for in a field order or  
219 change order, it must request the additional time as provided  
220 above. At the request of the Engineer, the Contractor must  
221 show how the critical path will be affected and must also support  
222 the time extension request with schedules, as well as statements  
223 from its 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 108.11(A)(1), 108.11(A)(2), or 108.11(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.

328 **(6) Contractor Caused Delays.** No time extension will be  
329 granted under the following circumstances:  
330

331 (a) Delays within the Contractor's control in performing  
332 the work caused by the Contractor, subcontractor, supplier,  
333 or any combination thereof.  
334

335 (b) Delays within the Contractor's control in arrival of  
336 materials and equipment caused by the Contractor,  
337 subcontractor, supplier, or any combination thereof, in  
338 ordering, fabricating, and delivery.  
339

340 (c) Delays requested for changes which do not affect the  
341 critical path.  
342

343 (d) Delays caused by the failure of the Contractor to  
344 make submittals in a timely manner for review and  
345 acceptance by the Engineer, such as but not limited to shop  
346 drawings, descriptive sheets, material samples, and color  
347 samples except as covered in Subsection 108.06(B)(3) and  
348 108.06(B)(4).  
349

350 (e) Delays caused by the failure to submit sufficient  
351 information and data in a timely manner in the proper form in  
352 order to obtain necessary permits related to the work.  
353

354 (f) Failure to follow the procedure within the time allowed  
355 by contract to request a time extension.  
356

357 (g) Failure of the Contractor to provide evidence  
358 sufficient to support the time extension request.  
359

360 **(7) Reduction in Time.** If the State deletes or modifies any  
361 portion of the work, an appropriate reduction of contract time may  
362 be made in accordance with Subsection 104.02 - Changes.  
363

364 **108.07 Progress Schedules.**  
365

366 **(A) Forms of Schedule.** All schedules shall be submitted using the  
367 specific computer program designated in the bid documents. If no such  
368 scheduling software program is designated, then all schedules shall be  
369 submitted using the latest version of SureTrak Project Manager by  
370 Primavera Systems, Inc.  
371

372 Schedule submittals shall be as follows:  
373



374 **(1) For Contracts \$2,000,000) or less or For Contract Time**  
375 **100 Working Days or 140 Calendar Days or less.** For contracts  
376 of \$2,000,000 or less or for contract time of 100 working days or  
377 140 calendar days or less, the progress schedule will be a Time  
378 Scaled Logic Diagram (TSLD). The Contractor shall submit a  
379 TSLD submittal package and it shall meet the following  
380 requirements and have these essential and distinctive elements:  
381

382 **(a)** The major features of work, such as but not limited to  
383 BMP installation, grubbing, roadway excavation, structure  
384 excavation, structure construction, shown in the  
385 chronological order in which the Contractor proposes to work  
386 that feature or work and its location on the project. The  
387 schedule shall account for normal inclement weather,  
388 unusual soil or other conditions that may influence the  
389 progress of the work, schedules, and coordination required  
390 by any utility, off or on site fabrications, and other pertinent  
391 factors that relate to progress;  
392

393 **(b)** All features listed or not listed in the contract  
394 documents that the Contractor considers a controlling factor  
395 for the timely completion of the contract work;  
396

397 **(c)** The time span and sequence of the activities or  
398 events for each feature, and its interrelationship and  
399 interdependencies in time and logic to other features in  
400 order to complete the project;  
401

402 **(d)** The total anticipated time necessary to complete work  
403 required by the contract;  
404

405 **(e)** A chronological listing of critical intermediate dates or  
406 time periods for features or milestone or phases that can  
407 affect timely completion of the project;  
408

409 **(f)** Major activities related to the location on the project;  
410

411 **(g)** Non-construction activities, such as submittal and  
412 acceptance periods for shop drawings and material,  
413 procurement, testing, fabrication, mobilization, and  
414 demobilization or order dates of long lead material;  
415

416 **(h)** Set schedule logic for out of sequence activities to  
417 retain logic. In addition, open ends shall be non-critical;  
418

419 **(i)** Show target bars for all activities:  
420

(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;

468 (h) No individual activity shall have duration of more than  
469 20 calendar days unless requested and approved by the  
470 Engineer;

471  
472 (i) All activities shall have work breakdown structure  
473 codes and activity codes. The activity codes shall have  
474 coding that incorporates information for phase, location,  
475 who is responsible for doing work and type of operation and  
476 activity description and  
477

478 (j) Incorporate all physical access and availability  
479 restraints.  
480

481 **(B) Inspection and Testing.** All schedule shall provide reasonable  
482 time and opportunity for the Engineer to inspect and test each work  
483 activity.  
484

485 **(C) Engineer's Acceptance of Progress Schedule.** The submittal  
486 of, and the Engineer's receipt of any progress schedule shall not be  
487 deemed an agreement to modify any terms or conditions of the contract.  
488 Any modifications to the contract terms and conditions that appear in or  
489 may be inferred from an acceptable schedule will not be valid or  
490 enforceable unless and until the Engineer exercises discretion to issue an  
491 appropriate change order. Nor shall any submittal or receipt imply the  
492 Engineer's approval of the schedule's breakdown, its individual elements,  
493 any critical path that may be shown nor shall it obligate the Department to  
494 make its personnel available outside normal working hours or the working  
495 hours established by the Contract in order to accommodate such  
496 schedule. The Contractor has the risk of all elements (whether or not  
497 shown) of the schedule and its execution. No claim for additional  
498 compensation or time, or both shall be made by the Contractor or  
499 recognized by the Engineer for delays during any period for which an  
500 acceptable progress schedule or an updated progress schedule as  
501 required by Subsection 108.07(E) – Contractor's Continuing Schedule  
502 Submittal Requirements had not been submitted. Any acceptance or  
503 approval of the schedule shall be for general format only and shall not be  
504 deemed an agreement by the Department that the construction means,  
505 methods and resources shown on the schedule will result in work that  
506 conforms to the contract requirements or that the sequences or durations  
507 indicated are feasible.  
508

509 **(D) Initial Progress Schedule.** The Contractor shall submit an initial  
510 progress schedule. The initial progress schedule shall consist of the  
511 following:  
512

513 (1) Four sets of the TSLD schedule,  
514

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

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

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

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

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

533  
534 (b) Is a milestone activity;

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

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

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

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

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

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

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

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

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

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

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

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

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

586  
587 The Engineer may withhold progress payment until the Contractor  
588 is in compliance with all schedule update requirements  
589

590 **(F) Float.** All float appearing on a schedule is a shared commodity.  
591 Float does not belong to or exist for the exclusive use or benefit of either  
592 the State or the Contractor. The State or the Contractor has the  
593 opportunity to use available float until it is depleted. Float has no  
594 monetary value.  
595

596 **(G) Scheduled Meetings.** The Contractor shall meet on a bi-weekly  
597 basis with the Engineer to review the progress schedule. The Contractor  
598 shall have someone attending the meeting that can answer all questions  
599 on the TSLD and other schedule related submittals.  
600

601 **(H) Accelerated Schedule; Early Completion.** If the Contractor  
602 submits an accelerated schedule (shorter than the contract time), the  
603 Engineer's review and acceptance of an accelerated schedule does not  
604 constitute an agreement or obligation by the State to modify the contract  
605 time or completion date. The Contractor is solely responsible for and  
606 shall accept all risks and any delays, other than those that can be directly  
607 and solely attributable to the State that may occur during the work, until  
608 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.

**(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 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. 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.

When the Contractor fails to reach substantial completion of the work for which liquidated damages are specified, within the time or times fixed in the contract or any extension thereof, in addition to all other remedies for breach that may be available to the State, the Contractor shall pay liquidated damages to the State, in the amount of \$700 per working day.

**(A) 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.

**(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.

**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;



750 (c) Perform the work in strict compliance with the  
751 provisions of the contract; or

752  
753 (d) Provide adequate supervision on the jobsite.

754  
755 (5) The convenience of the State.

756  
757 **(B) Partial and Total Suspension.** Suspension of work on some but  
758 not all items of work shall be considered a "partial suspension".  
759 Suspension of work on all items shall be considered "total suspension".  
760 The period of suspension shall be computed from the date set out in the  
761 written order for work to cease until the date of the order for work to  
762 resume.

763  
764 **(C) Reimbursement to Contractor.** In the event that the Contractor  
765 is ordered by the Engineer in writing as provided herein to suspend all  
766 work under the contract for the reasons specified in Subsections  
767 108.10(A)(2), 108.10(A)(3), or 108.10(A)(5) of the "Suspension of Work"  
768 paragraph, the Contractor may be reimbursed for actual direct costs  
769 incurred on work at the jobsite, as authorized in writing by the Engineer,  
770 including costs expended for the protection of the work. An allowance of 5  
771 percent for indirect categories of delay costs will be paid on any  
772 reimbursed direct costs, including extended branch and home-office  
773 overhead and delay impact costs. No allowance will be made for  
774 anticipated profits. Payment for equipment which is ordered to standby  
775 during such suspension of work shall be made as described in Subsection  
776 109.02(B) - Rental Rates for Idle and Standby Time.

777  
778 **(D) Cost Adjustment.** If the performance of all or part of the work is  
779 suspended for reasons beyond the control of the Contractor except an  
780 adjustment shall be made for any increase in cost of performance of this  
781 contract (excluding profit) necessarily caused by such suspension, and  
782 the contract modified in writing accordingly.

783  
784 However, no adjustment to the contract price shall be made for  
785 any suspension, delay, or interruption:

786  
787 (1) For weather related conditions,

788  
789 (2) To the extent that performance would have been so  
790 suspended, delayed, or interrupted by any other cause, including  
791 the fault or negligence of the Contractor; or

792  
793 (3) For which an adjustment is provided for or excluded under  
794 any other provision of this Contract.

796 **(E) Claims for Adjustment.** Any adjustment in contract price made  
797 shall be determined in accordance with Subsections 104.02 – Changes  
798 and 104.06 – Methods of Price Adjustment.  
799

800 Any claims for such compensation shall be filed in writing with the  
801 Engineer within 30 days after the date of the order to resume work or the  
802 claim will not be considered. The claim shall conform to the requirements  
803 of Subsection 107.15(D) – Making of a Claim. The Engineer will take the  
804 claim under consideration, may make such investigations as are deemed  
805 necessary and will be the sole judge as to the equitability of the claim.  
806 The Engineer's decision will be final.  
807

808 **(F) No Adjustment.** No provision of this clause shall entitle the  
809 Contractor to any adjustments for delays due to failure of its surety, the  
810 cancellation or expiration of any insurance coverage required by the  
811 contract documents, for suspensions made at the request of the  
812 Contractor, for any delay required under the contract, for suspensions,  
813 either partial or whole, made by the Engineer under Subsection  
814 108.10(A)(4) of the "Suspension of work" paragraph.  
815

#### 816 **108.12 Termination of Contract for Cause.**

817

818 **(A) Default.** If the Contractor refuses or fails to perform the work, or  
819 any separable part thereof, with such diligence as will assure its  
820 completion within the time specified in this contract, or any extension  
821 thereof, or commits any other material breach of this contract, and  
822 further fails within seven days after receipt of written notice from the  
823 Engineer to commence and continue correction of the refusal or failure  
824 with diligence and promptness, the Engineer may, by written notice to  
825 the Contractor, declare the Contractor in breach and terminate the  
826 Contractor's right to proceed with the work or the part of the work as to  
827 which there has been a delay or other breach of contract. In such event,  
828 the State may take over the work, perform the same to completion, by  
829 contract or otherwise, and may take possession of, and utilize in  
830 completing the work, the materials, appliances, and plant as may be on  
831 the site of the work and necessary therefore. Whether or not the  
832 Contractor's right to proceed with the work is terminated, the Contractor  
833 and the Contractor's sureties shall be liable for any damage to the State  
834 resulting from the Contractor's refusal or failure to complete the work  
835 within the specified time.  
836

837 **(B) Additional Rights and Remedies.** The rights and remedies of  
838 the State provided in this contract are in addition to any other rights and  
839 remedies provided by law.  
840

841 **(C) Costs and Charges.** All costs and charges incurred by the State,  
842 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:

890 (1) Any completed work and

891  
892 (2) Any partially completed construction, goods, materials,  
893 parts, tools, dies, jigs, fixtures, drawings, information, and  
894 contract rights (hereinafter called "construction material") that the  
895 Contractor has specifically produced or specially acquired for the  
896 performance of the terminated part of this contract.  
897

898 (3) The Contractor shall protect and preserve all property in the  
899 possession of the Contractor in which the State has an interest.  
900 If the Engineer does not elect to retain any such property, the  
901 Contractor shall use its best efforts to sell such property and  
902 construction materials for the State's account in accordance with  
903 the standards of HRS Chapter 490:2-706.  
904

905 **(D) Compensation.**  
906

907 (1) The Contractor shall submit a termination claim specifying  
908 the amounts due because of the termination for convenience  
909 together with cost or pricing data, submitted to the extent required  
910 by Subchapter 15, Chapter 3-122, HAR. If the Contractor fails  
911 to file a termination claim within one year from the effective date of  
912 termination, the Engineer may pay the Contractor, if at all, an  
913 amount set in accordance with Subsection 108.12(D)(3).  
914

915 (2) The Engineer and the Contractor may agree to a settlement  
916 provided the Contractor has filed a termination claim supported by  
917 cost or pricing data submitted as required and that the settlement  
918 does not exceed the total contract price plus settlement costs  
919 reduced by payments previously made by the State, the proceeds  
920 of any sales of construction, supplies, and construction materials  
921 under Subsection 108.12(C)(3), and the proportionate contract  
922 price of the work not terminated.  
923

924 (3) Absent complete agreement, the Engineer will pay the  
925 Contractor the following amounts less any payments previously  
926 made under the contract:  
927

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

937 anticipated rate of loss. No anticipated profit or  
938 consequential damage will be due or paid.  
939

940 (b) Subcontractors shall be paid a markup of 10 percent  
941 on their direct job costs incurred to the date of termination.  
942 No anticipated profit or consequential damage will be due or  
943 paid to any subcontractor. These costs must not include  
944 payments made to the Contractor for subcontract work  
945 during the contract period.  
946

947 (c) The total sum to be paid the Contractor shall not  
948 exceed the total contract price reduced by the amount of any  
949 sales of construction supplies, and construction materials.  
950

951 (4) Cost claimed, agreed to, or established by the State shall  
952 be in accordance with Chapter 3-123, HAR.  
953

954 **108.14 Pre-Final and Final Inspections.**  
955

956 (A) **Inspection Requirements.** Before the Engineer undertakes a  
957 final inspection of any work, a pre-final inspection must first be conducted.  
958 The Contractor shall notify the Engineer that the work has reached  
959 substantial completion and is ready for pre-final inspection.  
960

961 (B) **Pre-Final Inspection.** Before notifying the Engineer that the work  
962 has reached substantial completion, the Contractor shall inspect the  
963 project and test all installed items with all of its subcontractors as  
964 appropriate. The Contractor shall also obtain the following documents as  
965 applicable to the work:  
966

967 (1) All written guarantees required by the contract.  
968

969 (2) **As-Built Drawing** – The Contractor shall prepare and submit  
970 for all work full size 40-inch x 30-inch as-built drawings showing all  
971 locations and any and all changes to the work after the work is  
972 completed. These as-builts will be the official record and shall be  
973 drawn on vellum or other material directed to be used by the  
974 Engineer with professional drafting techniques and standards that  
975 are acceptable to the State.  
976

977 (3) Complete weekly certified payroll records for the Contractor  
978 and Subcontractors.  
979

980 (4) Certificate of Plumbing and Electrical Inspection.  
981

982 (5) Certificate of building occupancy as required.  
983

- 984 (6) Certificate of Soil and Wood Treatments.  
985  
986 (7) Certificate of Water System Chlorination.  
987  
988 (8) Certificate of Elevator Inspection, Boiler and Pressure Pipe  
989 Inspection.  
990  
991 (9) Maintenance Service Contract and two copies of a list of all  
992 equipment installed.  
993  
994 (10) Current Tax clearance. The contractor will be required to  
995 submit an additional tax clearance certificate when the final  
996 payment is made.  
997  
998 (11) Any other final items and submittals required by the contract  
999 documents.  
1000

1001 **(C) Procedure.** When in compliance with the above requirements,  
1002 the Contractor shall notify the Engineer in writing that the project has  
1003 reached substantial completion and is ready for pre-final inspection.  
1004

1005 The Engineer will then make a preliminary determination as to  
1006 whether or not the project is substantially complete and ready for pre-final  
1007 inspection. The Engineer may, in writing, postpone until after the pre-  
1008 final inspection the Contractor's submittal of any of the items listed in  
1009 Subsection 108.14(B) – Pre-Final Inspection, herein, if in the Engineer's  
1010 discretion it is in the interest of the State to do so.  
1011

1012 If, in the opinion of the Engineer, the project is not substantially  
1013 complete, the Engineer will provide the Contractor a punchlist of specific  
1014 deficiencies in writing which must be corrected or finished before the work  
1015 will be ready for a pre-final inspection. The Engineer may add to or  
1016 otherwise modify this punchlist from time to time. The Contractor shall  
1017 take immediate action to correct the deficiencies and must repeat all steps  
1018 described above including written notification that the work is ready for  
1019 pre-final inspection.  
1020

1021 After the Engineer is satisfied that the project appears substantially  
1022 complete a pre-final inspection shall be scheduled within ten working days  
1023 after receipt of the Contractor's latest letter of notification that the project  
1024 is ready for pre-final inspection.  
1025

1026 If, as a result of the pre-final inspection, the Engineer determines  
1027 the work is not substantially complete, the Engineer will inform the  
1028 Contractor in writing as to specific deficiencies which must be corrected  
1029 before the work will be ready for another pre-final inspection. If the  
1030 Engineer finds the work is substantially complete but finds deficiencies

that must be corrected before the work is ready for final inspection, the Engineer will prepare in writing and deliver to the Contractor a punchlist 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.

- 1172 (3) Certificate of Plumbing and Electrical Inspection.  
1173  
1174 (4) Certificate of Building Occupancy.  
1175  
1176 (5) Certificate for Soil Treatment and wood Treatment.  
1177  
1178 (6) Certificate of Water System Chlorination.  
1179  
1180 (7) Certificate of Elevator Inspection, boiler and Pressure Pipe  
1181 Installation.  
1182  
1183 (8) Tax Clearance.  
1184  
1185 (9) All other documents required by the Contract or by law.  
1186

1187 (B) **Failure to Meet Closing Requirements.** The Contractor shall  
1188 meet the applicable closing requirements within 60 days from the date of  
1189 Project Acceptance or the agreed to Punchlist complete date. Should  
1190 the Contractor fail to comply with these requirements, the Engineer may  
1191 terminate the Contract for cause."  
1192  
1193  
1194  
1195

**END OF SECTION 108**