

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
613	Contract Item No. 613.0110 - Centerline and Reference Survey Monument
621	All Contract Items under Section 621 - Traffic Control Signs
629	All Contract Items under Section 629 - Pavement Markings

39

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

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

46 performance of the contract. Contractors may enter into subcontracts
47 only with subcontractors listed in the proposal or with non-listed joint
48 contractors/subcontractors permitted under Subsection 102.06 -
49 Preparation of Proposal. No subcontractor may be added or deleted
50 and substitutions will be allowed only if the subcontractor:

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

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

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

68 **108.02 Notice to Proceed (NTP).** A notice to proceed will be given to the
69 Contractor not later than 90 days from the date of execution of the contract.
70 The notice to proceed will indicate the date the Contractor is expected to begin
71 the construction and from which date contract time will be charged.

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

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

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

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

102 **108.03 Prosecution of Work.** Unless otherwise permitted by the Engineer,
103 in writing the Contractor shall not commence with physical construction unless
104 sufficient materials and equipment are available for either continuous
105 construction or completion of a specified portion of the work.
106

107 **108.04 Preconstruction Data Submittal.** The awardee shall submit to the
108 Engineer for information and review the pre-construction data within 15 days
109 from the date of notice of intent to enter the contract. Until the items listed
110 below are received and found acceptable by the Engineer, the Contractor shall
111 not commence work unless otherwise authorized to do so in writing and subject
112 to such conditions set by the Engineer. No progress payment will be made to
113 the Contractor until the Engineer acknowledges, in writing, receipt of the
114 following preconstruction data submittals acceptable to the Engineer:
115

- 116 (1) List of the Superintendent and other Supervisory Personnel;
- 117
- 118 (2) Name of person(s) authorized to sign for the Contractor;
- 119
- 120 (3) Work Schedule;
- 121
- 122 (4) Initial Progress Schedule (See Subsection 108.07 – Progress
- 123 Schedule)
- 124
- 125 (5) Water Pollution and Siltation Control Submittals;
- 126
- 127 (6) Solid Waste Disposal form;
- 128
- 129 (7) Tax Rates;
- 130
- 131 (8) Insurance Rates
- 132
- 133 (9) Certificate of Insurance satisfactory to the Engineer that the
- 134 Contractor has in place all insurance coverage required by the contract
- 135 documents; and
- 136

137 (10) Schedule of agreed prices

138
139 (11) List of Suppliers.

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

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

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

157
158 **108.06 Contract Time.**

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

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

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

183 **(B) Modifications of Contract Time.** Whenever the Contractor
184 believes that an extension of contract time is justified, the Contractor
185 shall serve written notice on the Engineer not more than five working days
186 after the occurrence of the event that causes a delay or justifies a
187 contract time extension. Contract time may be adjusted for the following
188 reasons or events, but only if and to the extent the critical path has been
189 impacted:
190

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

203 Additional time to perform the extra work will be added to the
204 time allowed in the contract without regard to the date the change
205 directive was issued, even if the contract completion date has
206 passed. A change requiring time issued after contract time has
207 expired will not constitute an excusal or waiver of pre-existing
208 Contractor delay.
209

210 **(2) Delay for Permits.** For delays in the routine application
211 and processing time required to obtain necessary permits on the
212 condition that the delay is not caused by the Contractor, and
213 provided that as soon as the delay occurs, the Contractor notifies
214 the Engineer in writing that the permits are not available. Time
215 extensions will be the exclusive relief granted on account of such
216 delays.
217

218 **(3) Delays Beyond Contractor's Control.** For delays caused
219 by acts of God, or the public enemy, fire, inclement weather days
220 or adverse conditions resulting therefrom, earthquakes, floods,
221 epidemics, quarantine restrictions, labor disputes impacting the
222 Contractor or the State, freight embargoes and other reasons
223 beyond the Contractor's control, the Contractor may be granted an
224 extension of time provided that:
225

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

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

233
234 2. Include copies of pertinent documentation to
235 support the time extension request.

236
237 3. Cite the anticipated period of delay and the time
238 extension requested.

239
240 4. State either that the above circumstances have
241 been cleared and normal working conditions restored
242 as of a certain day or that the above circumstances
243 will continue to prevent completion of the project.

244
245 (b) The Contractor shall notify the Engineer in writing
246 when the delay ends. Time extensions will be the exclusive
247 relief granted and no additional compensation will be paid
248 the Contractor for such delays.

249
250 (4) **Delays in Delivery of Materials and/or Equipment.** For
251 delays in delivery of materials and/or equipment which occur as a
252 result of unforeseeable causes beyond the control and without fault
253 of the Contractor, its subcontractor(s) or supplier(s), the
254 Contractor may be granted an extension of time provided that it
255 complies with the following procedures:

256
257 (a) The Contractor's written notice to the Engineer must
258 describe the delays and state the effect such delays may
259 have on the Completion Date of the Contract.

260
261 (b) The Contractor, if requested, must submit to the
262 Engineer within five days after a firm delivery date for the
263 material and equipment is established a written statement
264 as to the delay to the progress of the project. The delay
265 must be substantiated as follows:

266
267 1. state specifically the reason or reasons for the
268 delay. Explain in a detailed chronology the effect of
269 this delay to the other work and/or the completion
270 date.

271
272 2. Submit copies of purchase order(s), factory
273 invoice(s), bill(s) of lading, shipping manifest(s),

274 delivery tag(s), and any other documents to support
275 the time extension request.
276

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

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

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

307 **(6) Contractor Caused Delays.** No time extension will be
308 considered for the following:
309

310 (a) Delays within the Contractor's control in performing
311 the work caused by the Contractor, subcontractor and/or
312 supplier.
313

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

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

323 (d) Delays caused by the failure of the Contractor to
324 submit for review and acceptance by the Engineer, on a
325 timely basis, such as but not limited to shop drawings,
326 descriptive sheets, material samples, and color samples
327 except as covered in Subsection 108.06(B)(3) and
328 108.06(B)(4).
329

330 (e) Failure to follow the procedure within the time allowed
331 qualifying for a time extension.
332

333 (7) **Reduction in Time.** If the State deletes or modifies any
334 portion of the work, an appropriate reduction of contract time may
335 be made in accordance with Subsection 104.02 - Changes.
336

337 **108.07 Progress Schedules.**
338

339 (A) **Forms of Schedule.** All schedules shall be submitted using the
340 specific computer program designated in the bid documents. If no such
341 scheduling software program is designated, then all schedules shall be
342 submitted using the latest version of SureTrak Project Manager by
343 Primavera Systems, Inc.
344

345 Schedule submittals shall be as follows:
346

347 (1) **For Contracts \$2,000,000) or less or For Contract Time**
348 **100 Working Days or 140 Calendar Days or less.** For contracts
349 of \$2,000,000 or less or for contract time of 100 working days or
350 140 calendar days or less, the progress schedule will be a Time
351 Scaled Logic Diagram (TSLD). The Contractor shall submit a
352 TSLD submittal package and it shall meet the following
353 requirements and have these essential and distinctive elements:
354

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

by any utility, off or on site fabrications, and other pertinent factors that relate to progress;

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

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

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

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

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

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

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

(i) Show target bars for all activities:

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

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

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

(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/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

452 (j) Incorporate all physical access and availability
453 restraints.
454

455 **(B) Inspection and Testing.** All schedule shall provide reasonable
456 time and opportunity for the Engineer to inspect and test each work
457 activity.
458

459 **(C) Engineer's Acceptance of Progress Schedule.** Submittal of and
460 the Engineer's receipt of any progress schedule shall not imply the
461 Engineer's approval of the schedule's breakdown, its individual elements,
462 any critical path that may be shown nor shall it obligate the Department to
463 make its personnel available outside normal working hours or the working
464 hours established by the Contract in order to accommodate such
465 schedule. The Contractor has the risk of all elements (whether or not
466 shown) of the schedule and its execution. No claim for additional
467 compensation and/or time shall be made by the Contractor or recognized
468 by the Engineer for delays during any period for which an acceptable
469 progress schedule or an updated progress schedule as required by
470 Subsection 108.09(E) – Contractor's Continuing Schedule Submittal
471 Requirements had not been submitted. Any acceptance or approval of
472 the schedule shall be for general format only and shall not be deemed an
473 agreement by the Department that the construction means, methods and
474 resources shown on the schedule will result in work that conforms to the
475 contract requirements or that the sequence or duration indicated are
476 approved as feasible.
477

478 **(D) Initial Progress Schedule.** The Contractor shall submit an initial
479 progress schedule. The initial progress schedule shall consist of the
480 following:
481

482 (1) Four sets of the TSLD schedule,
483

484 (2) All the software files and data to re-create the TSLD in a
485 computerized software format as specified by the Engineer.
486

487 (3) A listing of equipment that is anticipated to be used on the
488 project. Including the type, size, make, year of manufacture,
489 and all information necessary to identify the equipment in the
490 Rental Rate Blue Book for Construction Equipment,
491

492 (4) An anticipated manpower requirement graph plotting
493 contract time and total manpower requirement. This may be
494 superimposed over the payment graph.
495

496 (5) A Method Statement that is a detailed narrative describing
497 the work to be done and the method by which the work shall be
498 accomplished for each major activity. A major activity is an activity
499 that:
500

- 501 (a) Has a duration longer than five days;
- 502
- 503 (b) Is a milestone activity;
- 504
- 505 (c) Is a contract item that exceeds \$10,000 on the
506 contract cost proposal
- 507
- 508 (d) Is a critical path activity; or
- 509
- 510 (e) Is an activity designated as such by the Engineer.
511

512 Each Method Statement shall include the following items
513 needed to fulfill the schedule:
514

- 515 (i) Quantity, type, make, and model of equipment,
516
- 517 (ii) The manpower to do the work, specifying worker
518 classification, and
519
- 520 (iii) The production rate per eight hour day, needed to
521 meet the time indicated on the schedule.
522

523 (6) Two sets of color time-scaled project evaluation and review
524 technique charts ("PERT") using the activity box template of Logic
525 – Early Start or such other template designated by the Engineer.
526

527 If the Contract Documents establish a sequence or order for the
528 work, the initial progress schedule shall conform to such sequence or
529 order.
530

531 **(E) Contractor's Continuing Schedule Submittal Requirements.**
532 After the acceptance of the initial TSLD and when construction starts, the
533 Contractor shall submit four plotted progress schedules, two PERT
534 charts, and reports on all construction activities every two weeks (bi-
535 weekly). This scheduled bi-weekly submittal shall also include an
536 updated version of the project schedule in a computerized software format
537 as specified by the Engineer. The submittal shall have all the information
538 needed to re-create that time period's TSLD plot and reports. The bi-
539 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);

632 (5) The project title, project number, dated created, period the
633 schedule covers, Contractor's name and creator of the schedule on each
634 page.
635

636 Two days prior to each weekly meeting, the Contractor shall
637 submit a list of outstanding submittals, RFIs and issues that require
638 discussion.
639

640 **108.09 Liquidated Damages for Contractor's Delays.** The actual amount
641 of damages resulting from the Contractor's failure to complete the contract in a
642 timely manner is difficult to accurately determine. There the amount of such
643 damages shall be liquidated damages as set forth herein. The State may, at its
644 discretion deduct the amount from monies due or that may become due under
645 the contract.
646

647 (A) **Liquidated Damages for Failure to Open Lanes on Time.** In
648 addition to all other remedies for breach of contract, the Engineer may
649 assess liquidated damages for failure of the Contractor, for any reason,
650 to maintain open lanes to the public in the amount of \$500 for every
651 one-to fifteen-minute increment for each lane not open to the public.
652 The maximum amount assessed per day shall be \$5,000. The Engineer
653 will decide the time and liquidated damages assessed.
654

655 (B) **Liquidated Damages for Failure to Complete the Work or**
656 **Portions of the Work on Time.** When the Contractor fails to reach
657 substantial completion of the work for which liquidated damages are
658 specified, within the time or times fixed in the contract or any extension
659 thereof, in addition to all other remedies for breach that may be available
660 to the State, the Contractor shall pay liquidated damages to the State, in
661 the amount of \$700 per working day.
662
663

664 (1) **Liquidated Damages Upon Termination.** If the State
665 terminates on amount of Contractor's default, liquidated damages
666 may be charged against the defaulting Contractor and its surety
667 until final completion of work.
668

669 (2) **Liquidated Damages for Failure to Complete the**
670 **Punchlist.** The Contractor shall complete the work on any
671 punchlist created after substantial completion, within the contract
672 time or any extension thereof.
673

674 When the Contractor fails to complete the work on such
675 punchlist within the contract time or any extension thereof, the
676 Contractor shall pay liquidated damages to the State of 20 percent
677 of the amount of liquidated damages established for failure to

substantially complete the work within contract time. Liquidated damages shall not be assessed for the period between

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

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

(3) Actual Damages Recoverable If Liquidated Damages Deemed Unenforceable. In the event a court of competent jurisdiction holds that any liquidated damages assessed pursuant to this contract are unenforceable, the State will be entitled to recover its actual damages for Contractor's failure to complete the work, or any designated portion of the work within the time set by the contract.

108.10 Suspension of Work.

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

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

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

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

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

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

(b) Carry out orders given by the Engineer;

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

(d) Provide adequate supervision on the jobsite.

723 (5) The convenience of the State.
724

725 **(B) Partial and Total Suspension.** Suspension of work on some but
726 not all items of work shall be considered a "partial suspension".
727 Suspension of work on all items shall be considered "total suspension".
728 The period of suspension shall be computed from the date set out in the
729 written order for work to cease until the date of the order for work to
730 resume.
731

732 **(C) Reimbursement to Contractor.** In the event that the Contractor
733 is ordered by the Engineer in writing as provided herein to suspend all
734 work under the contract for the reasons specified in Subsections
735 108.10(A)(2), 108.10(A)(3), or 108.10(A)(5) of the "Suspension of Work"
736 paragraph, the Contractor may be reimbursed for actual direct costs
737 incurred on work at the jobsite, as authorized in writing by the Engineer,
738 including costs expended for the protection of the work. An allowance of 5
739 percent for indirect categories of delay costs will be paid on any
740 reimbursed direct costs, including extended branch and home-office
741 overhead and delay impact costs. No allowance will be made for
742 anticipated profits. Payment for equipment which is ordered to standby
743 during such suspension of work shall be made as described in Subsection
744 109.02(B) - Rental Rates for Idle and Standby Time.
745

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

752 However, no adjustment to the contract price shall be made for
753 any suspension, delay, or interruption:
754

755 (1) For weather related conditions,
756

757 (2) To the extent that performance would have been so
758 suspended, delayed, or interrupted by any other cause, including
759 the fault or negligence of the Contractor; or
760

761 (3) For which an adjustment is provided for or excluded under
762 any other provision of this Contract.
763

764 **(E) Claims for Adjustment.** Any adjustment in contract price made
765 shall be determined in accordance with Subsections 104.02 – Changes
766 and 104.06 – Methods of Price Adjustment.
767

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

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

108.11 Termination of Contract for Cause.

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

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

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

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.

108.12 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

859 (2) Any partially completed construction, goods, materials,
860 parts, tools, dies, jigs, fixtures, drawings, information, and
861 contract rights (hereinafter called "construction material") that the
862 Contractor has specifically produced or specially acquired for the
863 performance of the terminated part of this contract.
864

865 (3) The Contractor shall protect and preserve all property in the
866 possession of the Contractor in which the State has an interest.
867 If the Engineer does not elect to retain any such property, the
868 Contractor shall use its best efforts to sell such property and
869 construction materials for the State's account in accordance with
870 the standards of Section 490:2-706, HRS.
871

872 (D) **Compensation.**
873

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

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

891 (3) Absent complete agreement, the Engineer will pay the
892 Contractor the following amounts less any payments previously
893 made under the contract:
894

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

904 anticipated rate of loss. No anticipated profit or
905 consequential damage will be due or paid.
906

907 (b) Subcontractors shall be paid a markup of 10 percent
908 on their direct job costs incurred to the date of termination.
909 No anticipated profit or consequential damage will be due or
910 paid to any subcontractor. These costs must not include
911 payments made to the Contractor for subcontract work
912 during the contract period.
913

914 (c) The total sum to be paid the Contractor shall not
915 exceed the total contract price reduced by the amount of any
916 sales of construction supplies, and construction materials.
917

918 (4) Cost claimed, agreed to, or established by the State shall
919 be in accordance with Chapter 3-123, HAR.
920

921 **108.13 Pre-Final and Final Inspections.**
922

923 (A) **Inspection Requirements.** Before the Engineer undertakes a
924 final inspection of any work, a pre-final inspection must first be
925 conducted. The Contractor shall notify the Engineer that the work has
926 reached substantial completion and is ready for pre-final inspection.
927

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

934 (1) All written guarantees required by the contract.
935

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

944 (3) Complete weekly certified payroll records for the Contractor
945 and Subcontractors.
946

947 (4) Certificate of Plumbing and Electrical Inspection.
948

- 949 (5) Certificate of building occupancy as required.
950
951 (6) Certificate of Soil and Wood Treatments.
952
953 (7) Certificate of Water System Chlorination.
954
955 (8) Certificate of Elevator Inspection, Boiler and Pressure Pipe
956 Inspection.
957
958 (9) Maintenance Service Contract and two copies of a list of all
959 equipment installed.
960
961 (10) Current Tax clearance. The contractor will be required to
962 submit an additional tax clearance certificate when the final
963 payment is made.
964
965 (11) Any other final items and submittals required by the contract
966 documents.
967

968 **(C) Procedure.** When in compliance with the above requirements,
969 the Contractor shall notify the Engineer in writing that the project has
970 reached substantial completion and is ready for pre-final inspection.
971

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

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

988 After the Engineer is satisfied that the project appears substantially
989 complete a pre-final inspection shall be scheduled within ten working
990 days after receipt of the Contractor's latest letter of notification that the
991 project is ready for pre-final inspection.
992

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

1002 At any time before final acceptance, the Engineer may revoke the
1003 determination of substantial completion if the Engineer finds that it was
1004 not warranted and will notify the Contractor in writing the reasons
1005 therefore together with a description of the deficiencies negating the
1006 declaration.
1007

1008 When the date of substantial completion has been determined by
1009 the State, liquidated damages for the failure to complete the punchlist, if
1010 due to the State will be assessed in pursuant to Subsection 108.09(B)(2)-
1011 Liquidated Damages for Failure to Complete the Punchlist.
1012

1013 **(D) Punchlist; Final Inspection.** Upon receiving a punchlist after
1014 substantial completion, the Contractor shall promptly devote all required
1015 time, labor, equipment, materials and incidentals to correct and remedy
1016 all punchlist deficiencies. The Engineer may add to or otherwise modify
1017 this punchlist until final acceptance of the project.
1018

1019 Before final inspection of the work, the Contractor shall clean all
1020 ground occupied by the Contractor in connection with the work of all
1021 rubbish, excess materials, temporary structures and equipment, and all
1022 parts of the work and the worksite must be left in a neat and presentable
1023 condition to the satisfaction of the Engineer.
1024

1025 Final inspection will occur within ten working days after the
1026 Contractor notifies the Engineer in writing that all punchlist deficiencies
1027 remaining after the pre-final inspection have been completed and the
1028 Engineer concurs. If the Engineer determines that deficiencies still
1029 remain at the final inspection, the work will not be accepted and the
1030 Engineer will in writing notify the Contractor of the deficiencies which shall
1031 be corrected and the steps above repeated.
1032

1033 If the Contractor fails to correct the deficiencies and complete the
1034 work by the established or agreed date, the State may correct the
1035 deficiencies by whatever method it deems appropriate and deduct the
1036 cost from any payments due the Contractor.
1037

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.

1084 (1) Regardless of and in addition to any manufacturers' warranties, all
1085 work and equipment shall be guaranteed by the Contractor against
1086 defects in materials, equipment or workmanship for one year from the
1087 date of final acceptance or as otherwise specified in the contract
1088 documents.
1089

1090 (2) When the Engineer determines that repairs or replacements of any
1091 guaranteed work and equipment is necessary due to materials,
1092 equipment, or workmanship which are inferior, defective, or not in
1093 accordance with the terms of the contract, the Contractor shall at no cost
1094 to the State and within five working days of receipt of written notice from
1095 the State, commence to:
1096

1097 (a) Correct all noted defects and make replacements, as
1098 directed by the Engineer, in the equipment and work; and
1099

1100 (b) Repair or replace to new or pre-existing condition any
1101 damages resulting from such defective materials, equipment or
1102 installation thereof.
1103

1104 (3) The State will be entitled to the benefit of all manufacturers and
1105 installers warranties that extend beyond the terms of the Contractor's
1106 guaranty regardless of whether or not such extended warranty is required
1107 by the contract documents. The Contractor shall prepare and submit all
1108 documents required by the providers of such warranties to make them
1109 effective, and submit copies of such documents to the Engineer. If an
1110 available extended warranty cannot be transferred or assigned to the
1111 State as the ultimate user, the Contractor shall notify the Engineer who
1112 may direct that the warranted items be acquired in the name of the State
1113 as purchaser.
1114

1115 (4) If a defect is discovered during a guarantee period, all repairs and
1116 corrections to the defective items when corrected shall be guaranteed for
1117 a new duration equal to the original full guarantee period. The running of
1118 the guarantee period shall be suspended for all other work affected by
1119 any defect. The guarantee period for all other work affected by any such
1120 defect shall restart for its remaining duration upon confirmation by the
1121 Engineer that the deficiencies have been repaired or remedied.
1122

1123 (5) Nothing in this section is intended to limit or affect the State's rights
1124 and remedies arising from the discovery of latent defects in the work after
1125 the expiration of any guarantee period.
1126

1127 **108.19 No Waiver of Legal Rights.** The following will not operate or be
1128 considered as a waiver of any portion of the contract, or any power herein
1129 reserved, or any right to damages provided herein or by law:
1130

1131 (1) Any payment for or acceptance of the whole or any part of the
1132 work, or
1133

1134 (2) Any extension of time, or
1135

1136 (3) Any possession taken by the Engineer.
1137

1138 A waiver of any notice requirement or of any noncompliance with the
1139 contract will not be held to be a waiver of any other notice requirement or any
1140 other noncompliance with the contract.
1141

1142 **108.20 Final Settlement of Contract.**
1143

1144 (A) **Closing Requirements.** The contract will be considered settled
1145 after the project acceptance date and when the following items have been
1146 satisfactorily submitted, where applicable:
1147

1148 (1) All written guarantees required by the contract.
1149

1150 (2) Complete and certified weekly payrolls for the Contractor
1151 and its Subcontractor's.
1152

1153 (3) Certificate of Plumbing and Electrical Inspection.
1154

1155 (4) Certificate of Building Occupancy.
1156

1157 (5) Certificate for Soil Treatment and wood Treatment.
1158

1159 (6) Certificate of Water System Chlorination.
1160

1161 (7) Certificate of Elevator Inspection, boiler and Pressure Pipe
1162 Installation.
1163

1164 (8) Tax Clearance.
1165

1166 (9) All other documents required by the Contract or by law.
1167
1168
1169
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1171

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1182

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

END OF SECTION