

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION**

ADDENDUM NO. 1

FOR

**INTERSTATE ROUTE H-3, H-3 FINISH (UNIT VIII)
FEDERAL-AID INTERSTATE PROJECT NO. I-H3-1(75) UNIT VIII
AND
INTERSTATE ROUTE H-1 SEISMIC RETROFIT
AUSTIN-BISHOP SEPARATION AND WAIAU INTERCHANGE
FEDERAL-AID INTERSTATE PROJECT NO. BR-H1-1(241)**

DISTRICT OF EWA

ISLAND OF OAHU

2003

Amend the **SPECIAL PROVISIONS** as follows:

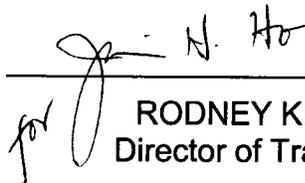
1. Amend Subsection 102.05 – Examination of Contract and Site of Work by adding the following paragraph:

“The geotechnical engineering report, ‘Geotechnical Engineering Exploration, Interstate Route H-1 Widening, Waimalu Viaduct (Westbound), Pearl City Off-Ramp to Kaonohi Street, Pearl City to Aiea, Oahu, Hawaii,’ dated January 22, 2003 by Geolabs, Inc. may be examined and borrowed at the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813. Borrowed reports shall be returned in good condition within 30 calendar days after the bid opening date.”

2. Replace Pages 104-1a through 104-23a, dated 3/30/03 with the attached Pages 104-1a through 104-23a, dated 4/9/03.
3. Replace Pages 108-1a through 108-25a, dated 4/3/03 with the attached Pages 108-1a through 108-26a, dated 4/9/03.

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Please acknowledge receipt of this Addendum No. 1 by recording the date of its receipt in the space provided on Page P-4 of the Proposal.



for RODNEY K. HARAGA
Director of Transportation

SECTION 104 - SCOPE OF WORK

Make the following amendments to said Section:

- (I) Delete the paragraph before **104.01(B) Voluntary Partnering**.
- (II) Delete **104.01(B) Voluntary Partnering** in its entirety.
- (III) Amend **104.02 Alterations of Plans or Type of Work** to read as follows:

"104.02 Alterations of Plans or Type of Work. The Engineer may at any time, during the progress of the work, by written order and without notice to the sureties, make changes in the work as may be found to be necessary or desirable. Such changes shall not invalidate the Contract nor release the surety. The Contractor will perform the work as changed, as though it had been a part of the original contract.

(A) **Minor Changes.** The Engineer may direct minor changes in the work with no changes in contract price or time of performance.

(B) **Oral Orders.** Any oral order, direction, instruction, interpretation or determination from the Engineer will be considered as a change only if the Contractor gives the Engineer an oral notice of its intent to treat such oral order, direction, instruction, interpretation or determination as a change directive before the Contractor acts in conformity with the oral order, direction, instruction, interpretation or determination but no later than twelve o'clock (12:00 P.M.) of the following working day. The oral notice shall be followed by a written notice that must be delivered to the Engineer within five days after delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, whether extra costs and a time extension will be requested, and source of the order that the Contractor regards as a change. Such written notice may not be waived and shall be a condition precedent to the filing of any claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any such oral order shall not be treated as a change for which the Contractor may make a claim for an increase in the contract time, compensation or contract price related to such work.

No more than ten working days after receipt of the written notice from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of their claim if a written response is not issued in the time established. If the Contractor objects to the Engineer's position, it shall file a written protest with the Engineer within 30 days after delivery to the Engineer of the Contractor's written notice of its intention to treat the oral order as a change. The protest shall be determined as provided in

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Subsection 105.18 – Claim for Adjustments and Disputes. Failure by the Contractor to submit a written notice in the time specified will be deemed as a waiver of all rights for an increase in contract time or compensation related to such work. In all cases, the Contractor shall proceed with the work as changed by the Oral Order.

(C) Penal Sum of the Surety Performance and Payment Bonds.

The penal sum of the Surety Performance and Payment Bonds will be adjusted by the amount of each and every Contract Change Order

(IV) Amend 104.03 Extra Work to read as follows:

"104.03 Field Orders. Upon receipt of the Field Order the Contractor shall proceed with the changes as ordered. If the Contractor does not agree with any of the terms or conditions or the adjustment or non-adjustment to the contract time and/or contract price set forth therein, the Contractor shall file a protest verbally to the Engineer before the Contractor acts in conformity with the Field Order, but no later than within 3 days after receipt of the Field Order and in writing within 5 days after receipt of the written Field Order. In the written protest the Contractor shall give all reasons in detail for its protest of the Field Order. The protest shall be determined as provided in Subsection 105.18 - Claims for Adjustment and Disputes.

Failure to file the written protest or to protest a portion(s) of the Field Order within the time specified shall constitute agreement on the part of the Contractor with all the terms, conditions, amounts and adjustment or non-adjustment to contract price and/or contract time set forth in the Field Order or the non-protested portion of the Field Order. The requirement for timely written notice shall be a condition precedent to the assertion of a claim and will not be waived. In all cases, the Contractor shall proceed with the work as changed by the Field Order."

(V) Delete 104.05 Construction and Maintenance of Detours in its entirety.

(VI) Delete 104.06 Rights in and Use of Materials Found on the Work its entirety.

(VII) Delete 104.07 Quarries and Pits on State Land for State and Federal Projects Only in its entirety.

(VIII) Move 104.08 Falsework Lighting to 104.11 Falsework Lighting.

(IX) Move 104.04 Maintenance of Traffic to 104.08 Maintenance of Traffic.

(X) Add the following:

"104.04 Contract Change Orders. The Engineer will issue sequentially numbered Contract Change Orders at times it deems appropriate during the contract period. A Contract Change Order may contain the adjustment in contract

price and/or time for a number of Field Orders. In all cases, the Contractor shall proceed with the work as changed by the Contract Change Order. No payment for any changes will be made until the Contract Change Order is issued.

104.05 Duty of Contractor to Provide Change Proposals. A Field Order may request the Contractor to supply the Engineer with a detailed proposal for an adjustment to the contract time or contract price for the work described therein. Any such request for a proposal shall not affect the duty of the Contractor to proceed as ordered with the work described in the Field Order.

The Engineer at times may issue a Request for Change Proposal to the Contractor requesting price and/or time adjustment proposals for contemplated changes in the work. The Request for Change Proposal is not a directive for the Contractor to perform the work described therein.

The Contractor shall submit a detailed written proposal in a time span allowed by the Engineer or if a time span is not stated by the Engineer it shall be within 15 days after receipt of a request for Request for Change Proposal or Field Order containing a request for proposal. The format shall set forth all charges the Contractor proposes for the change and a detailed justification for the proposed adjustment of the contract time, all properly itemized and supported by sufficient substantiating data to permit evaluation. The Engineer will determine whether the proposal is acceptable.

No payment shall be allowed to the Contractor for pricing, negotiating, research, or designs for proposed or actual changes. No time extensions will be granted for delay caused by late Contractor pricing of changes or proposed changes or time spent in negotiation.

The Engineer may accept the entire proposal, or any discrete cost item contained within the proposal, or the proposed adjustment to contract time by a notice in writing to the Contractor delivered to the contractor within thirty days after receipt of the proposal. The written acceptance by the Engineer of all or part of the Contractor's proposal shall create a binding agreement between the parties for that aspect of the change.

If the Engineer refuses to accept the Contractor's entire proposal, the Engineer may issue a Field Order for the work; or if a Field Order has already been issued, the Engineer may issue a supplemental Field Order establishing new contract prices, the remaining adjustments to contract price and /or contract time for the ordered changes. If the Contractor disagrees with any term, condition or adjustment contained in such Field Order or supplemental Field Order, it shall follow the protest procedures set forth in and be subject to the other terms of Subsection 104.03, Field Order.

104.06 Payment for Deleted Materials.

(A) Canceled Orders. If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the Engineer, the Contractor shall use its best efforts in a timely manner to cancel the order. The Department will pay reasonable cancellation charges required by the supplier. The Contractor will be paid an additional 7 percent markup on all reasonable cancellation charges for compensation of overhead and profit.

(B) Returned Materials. If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, and if such material is returnable to the supplier and the Engineer so directs, the material shall be returned. After the Contractor returns acceptable material to the supplier, the Department will pay for the reasonable charges made by the supplier or other source for the return of the material. The Contractor shall be paid a markup for overhead and profit on charges made by the supplier. The Contractor shall be paid a 7 percent markup on the reasonable charges made by the supplier or other source for returning the material for compensation for overhead and profit. The cost to the Contractor for handling the returned material will be paid as provided in Subsection 104.09 Methods of Price Adjustment.

(C) Uncancelled Material. If orders for acceptable material that was deleted cannot be canceled at a reasonable cost or returned, it will be paid for at the actual cost to the Contractor including a markup for overhead and profit of 7 percent. In such cases, the material paid for shall become the property of the Department and the cost of further storage and handling will be paid as provided in Subsection 104.09 Methods of Price Adjustment.

All charges the Contractor proposes for the acceptable material that was deleted shall be properly itemized and supported by sufficient substantiating legible data to permit evaluation. The Engineer will determine whether the proposal is acceptable.

104.07 Differing Site Conditions.

(A) Notification of the Engineer. The Contractor shall promptly and before such conditions are disturbed, notify the Engineer of:

- (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; or
- (2) Unknown physical conditions at the site of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this

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Contract.

(B) Adjustment of Price or Time for Performance. After receipt of the notice, the Engineer shall promptly investigate the site and if it is found that the conditions do materially so differ and cause an increase in the Contractor's cost of, or the time required for performance of any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made and the Contract modified by Contract Change Order. Any adjustment in contract price or time made pursuant to this clause shall be determined in accordance with the price and/or time adjustment subsection of the Contract.

(C) Timeliness of Claim. No claim of the Contractor under this subsection shall be allowed unless:

- (1) The Contractor gives verbal notification to the Engineer within 12 hours of discovery of the differing site condition.
- (2) The Contractor gives written notification to the Engineer no later than 5 days after the discovery of the differing site condition.

The Engineer may in writing, extend the times prescribed in this subsection. The notices to the Engineer are non-waivable conditions precedent to any claim under this Section.

(D) No Claim After Final Payment. No request by the Contractor for an equitable adjustment to the Contract shall be allowed if asserted after final payment under this Contract."

(XI) Amend 104.08 Maintenance of Traffic to read as follows:

"104.08 Maintenance of Traffic.

(A) General. The Contractor shall keep the road open to traffic during the progress of the work according to Section 645 - Work Zone Traffic Control.

The Contractor shall furnish, erect, and maintain lights, barricades, signs and other traffic control devices. Also, the Contractor shall take precautions for the protection of the work and safety of the public according to Subsection 107.13 Public Convenience and Safety and Section 645.

Obstructions to a roadway attributable to construction, maintenance, or engineering survey on or near public streets and highways are a hazard to motorists, pedestrians and workers at the work site. The Contractor shall

take such safety and precautionary measures as may be required according to Chapter 286, HRS; the Hawaii Administrative Rules, Title 19, Subtitle 5, Chapters 127, 128 and 129; and the most current editions or revisions of the MUTCD.

Where so provided on the plans, the Contractor may bypass traffic over an acceptable detour route. Keep the portion of the project used by public traffic in passable condition. Also, provide and maintain temporary crossings with trails, roads, streets, businesses, parking lots, garages, residences, and farms.

If elimination of abutting owners' access occurs, do not close the existing access until the replacement access facilities are usable. The Contractor may obtain written permission from the abutting owners setting the conditions for closing the existing access. Submit a copy of this agreement with the abutting owners to the Engineer for acceptance before such work begins.

Provide a smooth and even surface for public traffic use when working on an existing facility kept open to traffic. Conduct such work on only portion of the roadway. Alternate construction from one side to the other while routing traffic over the opposite side. Place sufficient fill at culvert and bridge locations to permit traffic to cross. Conduct culvert installation on only portions of the roadway to permit safe passage of traffic.

During subgrade and paving operations, consider use of shoulders for public traffic. If using part-width paving methods, consider use of side of the roadbed opposite the one under construction for public traffic. Keep a passageway wide enough to make at least two lanes of traffic open when sufficient width is available. The Engineer will consider shaping or maintaining the shoulders as included in the contract price of the various contract items and the Department will not make additional compensation.

Do not store material or equipment where the material or equipment will interfere with public traffic. Remove equipment and other obstructions to permit free and safe passage of public traffic when each day's work ends or if suspension of construction operations occurs.

Traffic incidental to other construction projects that abuts the principal routes of travel are part of the public traffic and shall be as required by contract.

The Contractor shall bear expenses of maintaining traffic over the section of road undergoing improvement or repair. Also, bear expenses of constructing, maintaining, removing, and furnishing approaches, crossings, intersections, and flaggers and their equipment, without direct

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compensation. Exceptions are as follows:

(1) Special Detours. The Department will cover payment for cost of constructing, maintaining, and removing such detour(s) when the proposal contains an item for "Construction and Maintenance of Detours". Also, the Department will include payment for the construction and removal of temporary bridges and accessory features. The Department will furnish right-of-way for temporary highways or bridges called for under this paragraph.

(2) Maintenance of Traffic During Suspension of Work. Provide safe passage for public traffic through the work site according to Subsection 108.08 - Temporary Suspension of Work.

(3) Special Maintenance Specified by the Engineer. The Engineer will pay the Contractor by one of the methods of Subsection 104.09 Methods of Price Adjustment if the Engineer specifies the special maintenance. The Engineer will be the sole judge of work to be classified as special maintenance.

(B) Traffic Maintenance Plans. Submit in writing traffic maintenance plans and schedules, including plans and schedules for traffic detours, road or lane closures, lane switches and the placement of temporary traffic control devices, warning signs, barricades and other protective devices, to the Engineer for acceptance at least ten working days before the date such work is scheduled to begin.

Such plans and schedules shall contain:

- (1)** a brief description of the work,
- (2)** dates of work,
- (3)** times of day affected,
- (4)** proposed public information sign, and
- (5)** proposed news release.
- (6)** detour layout plans.

Give the Fire Department at least 24 hours notice in writing before blocking or closing off access to streets. Keep fire hydrants accessible to the Fire Department. Do not place material or other obstruction closer to a fire hydrant than permitted by ordinances, rules or regulations. If there are no ordinances, rules or regulations, do not place material or other

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obstruction within 5 feet of a fire hydrant.

Make arrangements according to the contract for emergency work that may be required when work is not in progress.

The Engineer will permit lane closures only according to the "Construction Work Zone Notes" of the contract plans.

Exceptions to the lane closure hours identified in the "Construction Work Zone Notes" of the contract plans shall require the Engineer's acceptance in writing.

The Engineer will permit the Contractor to close only the number of lanes of traffic identified in the "Construction Work Zone Notes" of the contract plans during its working hours. During non-working hours, keep all lanes open to traffic and allow traffic to flow at the normal posted speed limit.

Failure to open lanes to traffic beyond the lane closure hours identified in the "Construction Work Zone Notes" of the contract plans shall result in assessment of liquidated damages as specified in Section 108.11 - Liquidated Damages and Failure to Complete on Time.

The Contractor shall not conduct operations on any roadway involving traffic lane closures or slowdown of traffic on the following dates:

- (1) The day preceding a holiday from 3:00 PM to Midnight,
- (2) All State Holidays,
- (3) The Thanksgiving Holiday weekend (Thursday, Friday, Saturday and Sunday), and
- (4) The two week holiday period for Christmas and New Years.

In addition, the Contractor shall not conduct operations on any roadway, excluding the Interstate Route H-1 through lanes and utility work on Pono Street and Ponoale Street without implementation of the detour road, involving traffic lane closures or slowdown of traffic during a consecutive three-week period for the "Beat the School Jam" during August and/or September.

No time extension shall be given for the restricted dates of operations listed above.

Notify the State and County transportation agencies including Bus Systems Division, Police Department, Fire Department, Ambulance

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Service, and the Department of Health in writing at least five days before the start of construction.

Construct, install, maintain, and remove five advisory signs as specified by the Engineer. Place the signs within the project limits. The signs shall have black letters on orange background. The minimum size of the signs shall be four feet high by eight feet wide.

The sign message shall include the starting date, hours, limits and duration of construction. The height of the letters shall be 8 inches, Series D. If accepted by the Engineer, the Contractor may use a minimum height of 6 inches, Series D. The Engineer will review and accept the advisory sign wording before installing. Install the advisory sign two weeks before the start of construction.

Take measures necessary to insure that safe and easily accessible passage is provided for pedestrians who must travel in or near the construction zone.

The Engineer will pay for furnishing, placing, maintaining and removing the advisory signs and insuring safe and accessible passage for pedestrians under 621.7020 – Construction Sign “Notice to Motorist”.

Submit requests for review and acceptance of detours and lane closures that will impact traffic during peak hours before scheduling the work to begin as follows:

- (1) detours - 8 weeks, and
- (2) lane closures - 6 weeks.

Also, these requests shall include:

- (1) An explanation of proposed changes to the existing traffic pattern;
- (2) A schedule of when installing informational and traffic control signs;
- (3) A schedule of when publishing advertisements;
- (4) A plan showing the proposed informational and traffic control signs; and
- (5) A plan showing the lane changes or detours. Plans for multi-lane highway lane changes and detours shall include details of

the beginning of the lane changes or detours.

The Engineer will not make payment for reviewing request submittals.

(C) Advertisement. If requested by the Engineer, place an advertisement in the newspaper for the following traffic pattern changes in operation during peak hours or night work:

- (1) Detours;
- (2) Lane closure;
- (3) Permanent road closure; and
- (4) Permanent new route that changes a previous route.

The advertisement shall contain the following information:

- (1) Map of traffic pattern change limits;
- (2) Map showing lane(s) closure and detour pattern;
- (3) Notice of starting and ending dates and duration; and
- (4) Explanation of the lane(s) closure or detours "Notice To Motorist".

The quality of the map shall be as follows:

- (1) The Department will not allow free hand printing or pencil;
- (2) Highlight important feature in bold letters by darkening, cross-hatching, crossing-out or coloring;
- (3) Minimum size shall be five columns wide and four columns deep. Lesser width columns may be considered to balance against the size of the drawing;
- (4) Text Specifications.
 - (a) Work being featured - 3/16 inch text
 - (b) Major roads and features - 1/8 inch text
 - (c) Other roads and features- first letter upper case

- (d) "Notice to Motorists" in upper case
- (e) Message - first letter upper case
- (5) Line Thickness.
 - (a) Important feature being advertised - thicker than rest of map
 - (b) Directional arrow - bolder than the rest of the lines shown on the map, when important, to show the route traffic should use.
- (6) Show reference direction such as "TO HILO, WAILUKU, HONOLULU, or LIHUE" with arrow.

The Contractor shall submit:

- (1) the "Notice to Motorists" for review and acceptance before placement in the newspaper 6 weeks before the start of work.
- (2) the actual size of the notice to be published in the newspaper for review and acceptance. The Engineer will not allow reduction of the notices once accepted. The final "Notice to Motorists" submittal shall be a good copy of the camera ready advertisement.

Place the advertisement for three consecutive days and within one week before the traffic pattern changes in the:

Honolulu Star-Bulletin and Honolulu Advertiser

Provide message boards as requested by the Engineer prior to lane or ramp closures.

The Contractor is directed to Section 645 - Work Zone Traffic Control for payment of advertisement.

(D) Lane Rental Provision. Monetary assessments will be made against the Contractor for each quarter hour there are restrictions, encroachments, or a reduction in the number of available travel lanes on Interstate Route H-1, including its on-ramps and off-ramps. This will include all calendar days, during the allowed closure hours identified in the "Construction Work Zone Notes" of the contract plans, for all lanes affected by the Contractor's operations, including lane closures shown on the contract plans.

This provision will be applicable without regard to the length of lane closed to traffic. For multiple work areas requiring the independent closure of the same or alternating lanes, the lane rental will be based on the reduction in the number of lanes open to traffic.

(1) Definition of Terms.

(a) Quarter Hour – Any 15-minute period or portion of a 15-minute period, beginning at the time when a lane is closed or obstructed by the Contractor's operation.

(b) Rental Charge – The amount, as shown in this Section, which represents the average quarter hourly cost of interference and inconvenience to the road user for each lane closure or obstruction.

(c) Lane Obstruction – When the Contractor's operations have resulted in:

- i. A useable lane width less than 11-feet,
- ii. A horizontal clear distance, which is measured from an object to an adjacent lane line, of less than 2-feet or as specified in the Contract, or
- iii. A reduced width of the eastbound shoulder lane, during its hours of operation.

(2) Rental Charge. The rental charge to be assessed for each lane closure or obstruction per direction of traffic per hour will be the estimated public inconvenience for such lane closure or obstruction as follows:

Closure and/or Obstruction	Weekday Estimated Public Inconvenience Per Quarter Hour						
	Midnight to 4:00 A.M.	4:00 A.M. to 6:00 A.M.	6:00 A.M. to 10:30 A.M.	10:30 A.M. to 2:30 P.M.	2:30 P.M. to 6:30 P.M.	6:30 P.M. to 10:00 P.M.	10:00 P.M. to Midnight
One Lane of Westbound Interstate Route H-1	\$0	N/A	N/A	\$250	N/A	N/A	\$0
Two Lanes of Westbound Interstate Route H-1	\$250	N/A	N/A	\$3,000	N/A	N/A	\$250
Full Closure of All Westbound Interstate Route H-1 Lanes and Shoulders	\$600	N/A	N/A	N/A	N/A	N/A	\$2,000
Full Closure of All Eastbound Interstate Route H-1 Lanes and Shoulders	\$500	N/A	N/A	N/A	N/A	N/A	\$1,500
One Lane of Westbound Pearl City Off-Ramp	\$0	\$250	\$250	\$250	\$2,000	\$500	\$0

Closure and/or Obstruction	Saturday Estimated Public Inconvenience Per Quarter Hour						
	Midnight to 4:00 A.M.	4:00 A.M. to 6:00 A.M.	6:00 A.M. to 10:30 A.M.	10:30 A.M. to 2:30 P.M.	2:30 P.M. to 6:30 P.M.	6:30 P.M. to 10:00 P.M.	10:00 P.M. to Midnight
One Lane of Westbound Interstate Route H-1	\$0	\$0	\$0	\$250	\$2,000	\$250	\$250
Two Lanes of Westbound Interstate Route H-1	\$250	\$250	\$250	N/A	N/A	N/A	\$500
Full Closure of All Westbound Interstate Route H-1 Lanes and Shoulders	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Full Closure of All Eastbound Interstate Route H-1 Lanes and Shoulders	N/A	N/A	N/A	N/A	N/A	N/A	N/A
One Lane of Westbound Pearl City Off-Ramp	\$0	\$0	\$250	\$250	\$500	\$250	\$0

Closure and/or Obstruction	Sunday Estimated Public Inconvenience Per Quarter Hour						
	Midnight to 4:00 A.M.	4:00 A.M. to 6:00 A.M.	6:00 A.M. to 10:30 A.M.	10:30 A.M. to 2:30 P.M.	2:30 P.M. to 6:30 P.M.	6:30 P.M. to 10:00 P.M.	10:00 P.M. to Midnight
One Lane of Westbound Interstate Route H-1	\$0	\$0	\$0	\$250	\$250	\$250	\$0
Two Lanes of Westbound Interstate Route H-1	\$250	\$250	\$250	N/A	N/A	N/A	\$250
Full Closure of All Westbound Interstate Route H-1 Lanes and Shoulders	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Full Closure of All Eastbound Interstate Route H-1 Lanes and Shoulders	N/A	N/A	N/A	N/A	N/A	N/A	N/A
One Lane of Westbound Pearl City Off-Ramp	\$0	\$0	\$0	\$0	\$250	\$0	\$0

* NOTE: The State reserves the right to calculate public inconvenience costs for situations unaccounted for.

The applicable lane rental charges will be deducted from the lump sum pay item, Item No. 104.1000 – Lane Rental Incentive. The deduction will be made based on the applicable rate for any and all closures whether work is being performed or not. Any money remaining in this item after project completion will be paid to the Contractor. However, if the entire pay item is expended before the work is completed, the Engineer will deduct the applicable lane rental charges from any monies due the Contractor for work performed.

(XII) Add the following:

"104.09 Methods of Price Adjustment. Any adjustment in the contract price pursuant to a change or claim shall be made in one or more of the following ways:

- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (2) By unit prices or other price adjustments specified in the contract or subsequently agreed upon;
- (3) The Engineer may base the adjustment for a lump sum item on a calculated proportionate unit price. The Engineer will calculate the proportionate unit price by dividing the original contract lump sum price by

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the actual or original estimated quantity established by the Contract Documents.

- (4) In such other manner as the parties may mutually agree;
- (5) At the sole option of the Engineer, work may be paid for on a force account basis in accordance with Subsection 109.04(A) Force Account Method;
- (6) By the Engineer's determination of the reasonable and necessary costs attributed to the event or situation caused by the change, plus appropriate profit or fee, all computed by the generally accepted accounting principals and applicable sections of Chapter 3-123 and 3-126 of the Procurement Code – Rules and Regulations and using Subsection 109.04(A)(1) Allowances for Overhead and Profit herein, as the method for calculating overhead and profit."

"104.10 Weekend and Night Work. The Department of Health has issued the following community noise variance permit. The Contractor shall comply with the conditions of this permit. If this community noise variance permit is revoked or work stopped due to public complaints regarding noise from the Contractor's work, the Contractor shall comply with the "maximum permissible sound levels" found in HAR 11-46-4(a). The Contractor will not be eligible for additional time or money.

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII

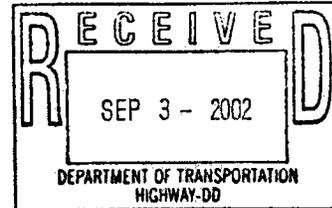


BRUCE S. ANDERSON, Ph.D., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
File:

August 9, 2002



CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Glenn Kurashima
Project Manager
SDOT-Design Branch-Highways Design Section
601 Kamokila Boulevard, Room 609
Kapolei, HI 96707

Dear Mr. Kurashima:

Enclosed is the VARIANCE (Docket No. 02 NR-VN-15) for Community Noise Control which was granted on August 9, 2002. We are also enclosing for your information the Findings of Fact and Conclusions of Law.

Please note the variance conditions and if there are any questions relative to the variance, please do not hesitate to contact me at 586-4702.

Sincerely,

A handwritten signature in cursive script, appearing to read "Russell S. Takata".

Russell S. Takata
Environmental Health Program Manager
Noise, Radiation & IAQ Branch

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STATE OF HAWAII
DEPARTMENT OF HEALTH

In the Matter of the Application)
For Variance for:)
)
STATE OF HAWAII) Docket No. 02-NR-VN-15
DEPARTMENT OF TRANSPORTATION) V-268
HIGHWAYS DIVISION)
HIGHWAY DESIGN SECTION)
Noise – Expansion and Improvements to)
the H-1 Freeway between the Kaonohi)
Street Overpass and Kamehameha)
Highway)
_____)

FINDINGS OF FACT AND CONCLUSION OF LAW

The application of the State of Hawaii, Department of Transportation, Highways Division, Highway Design Section, 601 Kamokila Boulevard, Room 609, Kapolei, Hawaii for a variance from Section 11-46-6(a) of Chapter 11-46, Hawaii Administrative Rules, Community Noise Control, was reviewed by the Noise, Radiation and Indoor Air Quality Branch of the Department of Health.

Findings of Fact

1. Section 342F-5, Hawaii Revised Statutes (H.R.S.), and Section 11-46-8, Hawaii Administrative Rules (H.A.R.), authorize the director to grant variances.
2. Section 11-46-6(a), H.A.R., states, "Without a permit or variance issued pursuant to section 11-46-7 or 11-46-8, no person within the state shall operate from any premises or land owned, rented, leased, occupied or controlled by that person, any excessive noise source."
3. The applicant proposes to expand and improve the H-1 freeway between the Kaonohi Street overpass and Kamehameha Highway. All of these improvements will result in enhanced roadway capacity and facilitate traffic flow in the westbound direction.
4. A variance from the provision of Chapter 11-46, H.A.R., is being requested for those periods when a permit cannot be granted. The variance is requested for Mondays through Fridays from 6:00 p.m. to 5:00 a.m.; on Saturdays from 7:00 a.m. to 9:00 a.m.; and Saturdays from 6:00 p.m. until 5:00 a.m. on Monday.

5. The area is characterized by a mix of single and multifamily dwellings, two elementary schools, and mixed commercial and light industrial uses.
6. Residents impacted by the project will be given advance notice regarding the project plans via a mailout that will also provide a name and phone number of a contact person who will respond to citizen complaints during the construction period.
7. A public informational meeting was held on June 26, 2002 at the Waimalu Elementary School Cafeteria. Approximately 3000 announcements were distributed to area residents and businesses drawing about 50 people to attend the meeting.
8. The equipment used for this project may create noise in excess of the maximum permissible sound levels found in Section 11-46-4(a). A variance is needed to perform the work during the requested hours not covered under a Community Noise Permit.
9. This project requires blocking traffic for extended periods of time. Working at night will avoid traffic congestion during the daytime hours.
10. The project will increase the number of westbound lanes on this segment of the H-1 Freeway from five to six. The project is proposed as a logical continuation of already-completed improvements to the connection between westbound Interstate Route H-3 and westbound Interstate Route H-1. The project will meet current freeway design standards, increase traffic safety, relieve traffic congestion, and meet the overall projected operating conditions on this segment of Interstate Route H-1.
11. The contractor will be required to maintain all equipment in good working order. All equipment will be equipped with mufflers. Any equipment found to be in poor repair or not in compliance with applicable regulations of the State and City and County of Honolulu shall be corrected prior to use.
12. Department of Transportation field personnel and the general contractor will monitor all equipment and construction activities on the job site to ensure the use of noise abatement measures. The contractor will immediately correct any violations that occur.
13. Instructional meetings will be held for construction crews and truck drivers to discuss noise abatement procedures, including the use of engine brakes, loading and unloading cargo, no shouting, the use of signal callers, and other practices as required.
14. The variance is requested from May 1, 2003 to November 30, 2004.

Conclusion of Law

Section 342F-5(c), H.R.S., states that no variance shall be granted by the Department unless the application and supporting information clearly show that:

1. The granting of the variance is in the public interest as defined in the Section 342F-4(c)(4), H.R.S.
2. The granting of this variance will not substantially endanger human health or safety.
3. Compliance with the rules, regulations or standards from which the variance is sought would produce serious hardship without equal or greater benefits to the public.

Based upon the foregoing findings of fact, it is concluded that these requirements have been met.

Recommendation

It is recommended that the variance request be GRANTED with the following conditions:

1. The applicant shall make every effort to minimize noise emanating from the project.
2. The applicant shall have a job-site inspector to whom immediate noise complaints can be forwarded for a prompt response and who shall also have the general responsibility of monitoring quiet work procedures.
3. If the noise level is such that the Department receives numerous complaints, the contractor shall cease operations, if ordered, and complete the project during hours on weekdays and weekends as directed.
4. The applicant shall notify the Noise, Radiation and Indoor Air Quality Branch, State Department of Health, as to the date and time of any variance hour's activity as soon as the dates are confirmed and also when the project is completed.
5. Should the duration of the project continue beyond the termination date, the applicant shall submit a request for extension along with an updated work schedule prior to November 30, 2004.
6. Pursuant to Section 342F-5(d)(3), H.R.S., the applicant shall be required to perform noise sampling during the variance hours and report the results of such sampling to the Noise, Radiation and Indoor Air Quality Branch of the Department of Health.

DATED: Honolulu, Hawaii, AUG 9 2002 .



RUSSELL S. TAKATA
Environmental Health Program Manager
Noise, Radiation and IAQ Branch

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BR-H1-1(241)
104-19a

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STATE OF HAWAII
DEPARTMENT OF HEALTH

In the Matter of the Application)
For Variance for:)
)
STATE OF HAWAII)
DEPARTMENT OF TRANSPORTATION)
HIGHWAYS DIVISION)
HIGHWAY DESIGN SECTION)
Noise – Expansion and Improvements to)
The H-1 Freeway between the Kaonohi)
Street Overpass and Kamehameha)
Highway)
_____)

Docket No. 02-NR-VN-15
V-268

DECISION AND ORDER

Pursuant to Chapter 342F, Hawaii Revised Statutes (H.R.S.), and Chapter 11-46, Hawaii Administrative Rules (H.A.R.), Community Noise Control; and based upon the application and review by the Noise, Radiation & Indoor Air Quality Branch, the variance request from the provisions of Section 11-46-6(a), H.A.R., is hereby GRANTED with the following conditions:

1. The applicant proposes to expand and improve the H-1 freeway between the Kaonohi Street overpass and Kamehameha Highway.
2. The variance is granted from May 1, 2003 to November 30, 2004.
3. The applicant shall make every effort to minimize noise emanating from the project.
4. The applicant shall have a job-site inspector to whom immediate noise complaints can be forwarded for prompt response, and who shall have the general responsibility of monitoring quiet work procedures.
5. If the noise level is such that the Department receives numerous complaints, the contractor shall cease operations during the variance hours, if ordered, and complete the project during times as directed.
6. The applicant shall notify the Noise, Radiation and Indoor Air Quality Branch, State Department of Health, as to the date and time of any variance activity as soon as the dates are confirmed and also when the project is completed. Should the duration of the project continue beyond the termination date, the applicant shall submit a request for extension along with an updated work schedule prior to November 30, 2004.

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7. Pursuant to Hawaii Revised Statutes, Chapter 342F, Section 342F(d)(3), the applicant shall be required to perform noise sampling during the variance hours and report the results of such sampling to the Noise, Radiation and Indoor Air Quality Branch of the Department of Health.

DATED: Honolulu, Hawaii, AUG 9 2002 .



JERRY Y. HARUNO
Environmental Health Program Administrator
Environmental Health Services Division

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LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

February 25, 2003

WES	
RTT	391
REC	FEB 26 2003 RMTc

Brian Takeda
Project Planner
R. M. Towill Corporation
420 Waiakamilo Road, Suite 111
Honolulu, Hawaii 96817-4941

Dear Mr. Takeda:

This is in reference to your request for an amendment of the **Community Noise Variance (Docket No. 02-NR-VN-15); Expansion and Improvements to the H-1 Freeway between the Kaonohi Street Overpass and Kamehameha Highway.**

The hours for the Community Noise Variance have been amended to 6:00 p.m. Fridays to 7:00 a.m. Mondays.

Should you have any questions, please contact Mr. James Toma of our staff at 586-4700.

Sincerely,

Russell S. Takata
Environmental Health Program Manager
Noise, Radiation & Indoor Air Quality Branch

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"104.11 Variations in Estimated Quantities. Where the quantity of a unit price item in this contract is estimated on the proposal schedule and where the actual quantity of such pay item varies more than 15 percent above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. The adjustment shall be subject to Subsection 104.09 – Methods of Price Adjustment and Subsection 109.04(A) – Allowances for Overhead and Profit."

END OF SECTION

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

"SECTION 108 - PROSECUTION AND PROGRESS

108.01 Subcontracting. The Contractor shall not subcontract, sell, transfer, assign, or otherwise dispose the contract or any portion thereof, or his/her right, title, or interest in the contract without the written consent of the Director. The Contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the selection or retention of subcontractors, and in the procurement of materials and leases.

Subject to the provisions of Section 103D-302, HRS, the Contractor may subcontract a portion of the work but the Contractor shall remain primarily responsible for the work so subcontracted, provided that the Contractor shall not be permitted to subcontract work to any subcontractor who has been suspended by the State. If requested by the Engineer, the Contractor shall provide a copy of any subcontract to the Engineer within seven calendar days.

The Contractor shall perform with his/her own organization, work amounting to not less than 30 percent of the total contract cost. Where an entire item is subcontracted, the value of work subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be estimated by the Director and be based on the cost of such portion of the contract item.

Under Section 103D-302, H.R.S., The Contractor is required to list the names of persons or firms to be engaged by the Contractor as a joint contractor or subcontractor in the performance of the contract. Bids that do not comply with the above requirements may be accepted if acceptance is in the best interest of the State and the value of the work to be performed by the subcontractor or joint contractor is equal to or less than one percent of the total bid amount. When a change in a listed subcontractor is requested by the Contractor, submission of a formal release from the listed subcontractor is required by the State before a substitution will be considered for approval regardless of whether the substitute is another subcontractor or said Contractor.

When any portion of the work which has been subcontracted is not prosecuted in a manner satisfactory to the Director, the Contractor, upon receipt of a written notice thereof, shall immediately remove the subcontractor from the project, and the subcontractor shall not again be employed on the project.

No subcontract shall in any case release the Contractor of his/her liability under the contract and bonds.

- (8) Right of Entry Agreements, as identified in 103.07 – Execution of the Contract; and
- (9) List of Suppliers.

108.04 Substitution of Materials and Equipment after Bid Opening. For substitution of materials and equipment, refer to Subsection 102.16 – Substitution of Materials and Equipment.

108.05 Progress Schedules. The software used for scheduling shall be the latest version of SureTrak Project Manager by Primavera Systems, Inc. No alternative software will be considered.

The Contractor shall submit an acceptable initial Time-Scaled Logic Diagram package (TSLD Package) to the Engineer for review before the date of NTP or within 30 calendar days after award of the contract whichever is earlier. The TSLD Package shall consist of the following:

1. Four sets of its Time-Scaled Logic Diagram (TSLD) schedule
2. All the files needed to re-create that time period's plot and reports on a 3-1/2 inch high-density floppy disk
3. An anticipated work completion or payment graph plotting contract time and gross payment anticipated submittal and when the Engineer requests an updated graph.
4. A listing of equipment that is anticipated to be used on the project. Include type, size, make, year of manufacture and all information necessary to identify the equipment in the Rental Rate Blue Book for Construction Equipment.
5. An anticipated manpower requirement graph plotting contract time and total manpower required. This may be superimposed over the payment graph
6. A Method Statement for each major activity group or description of work. A major activity is defined as an activity that has a duration longer than 5 days, or a milestone activity or a contract item that exceeds \$10,000 for the total amount for that item on the Contract cost proposal or a critical path activity or an activity designated as such by the Engineer. Each Method Statement shall be a detailed narrative describing the work to be done and the method by which the work shall be accomplished. Included as part of each Method Statement shall be the planned quantity and type, make and model of equipment, the manpower to do the work,

which shall also include worker classification and the production rate per eight hour day needed to meet the time frame indicated on the schedule. If the production rate varies by more than plus or minus ten percent or if planned equipment or manpower should change for any reason then another Method Statement shall be provided and additional information supplied to substantiate and differentiate it from other like activities.

7. Provide two each, a color timescaled Project Evaluation and Review Technique (PERT) charts using the activity box template of Logic

Under Section 103D-302, HRS, 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. When a change in a listed subcontractor is requested by the Contractor, submission of a formal release from the listed subcontractor is required by the State before a substitution will be considered for approval regardless of whether the substitute is another subcontractor or the Contractor himself/herself.

108.02 Notice to Proceed (NTP). When the Director accepts the contract, the Department will give a NTP to the Contractor. The Department will show the date that the Contractor may begin the work, which is the beginning of contract time. The date specified in the NTP will be no later than 120 days from the date of award unless there is no execution of contract.

The Contractor shall be allowed fourteen calendar days from the specified date to begin its work. In the event that the Contractor refuses or neglects to start the work, the Director may terminate the contract in accordance with Subsection 108.12 – Default and Termination of Contract.

Do not work before the specified date without a written acceptance. When the Contractor begins work before receiving the NTP, the Department will consider the Contractor doing work at its own volition and risk.

The Engineer will not allow additional compensation nor an extension of time for delay, hindrance or interference caused by doing the project work before the NTP date except when the same situation would have occurred if the Contractor had begun work after the NTP date.

108.03 Preconstruction Data Submittal. The awardee shall submit to the Department for information and review the pre-construction data within 15 days from the date of award of the contract. Such data shall include:

- (1) List of Supervisory Personnel;
- (2) Name and signature of person(s) authorized to sign for the Contractor;
- (3) Work Schedule;
- (4) Solid Waste Disposal Form;
- (5) Site Safety Plan;

All progress schedules submittal shall be a color Time-Scaled Logic Diagram (TSLD). The critical path shall be marked in red. For both the TSLD and PERT chart, no blue or black line diagrams will be acceptable. The Engineer will designate the color to be used and the size of the plot and quality of paper for both the TSLD and PERT chart.

When requested by the Engineer, submit updates of the anticipated work completion graph, equipment listing, manpower requirement graph or method statement. Submit such updates within four calendar days from the date of request by the Engineer.

Non-compliance with the required submittal timeline herein will be grounds for delaying the processing of the progress payment until the submittal is received and accepted.

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 submitted.

The critical path is defined as the chain(s) of activities that take the longest time to accomplish completion of the project.

Any float in the project schedule is owned by the project, and as such, neither the owner nor the Contractor owns it.

Full compensation for any additional costs occasioned by compliance with the provisions in this Subsection shall be considered incidental to various contract items of work and no additional compensation of any kind will be allowed therefore.

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

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

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

(2) 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;

(3) 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;

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

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

(6) major activities related to the location on the project;

(7) 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;

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

(9) show target bars for all activities:

(10) 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.

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

(12) 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.

(B) For Contracts Which Have A Contract Amount More Than One Million Dollars (\$1,000,000) Or Having A Contract Time Of More Than

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which shall also include worker classification and the production rate per eight hour day needed to meet the time frame indicated on the schedule. If the production rate varies by more than plus or minus ten percent or if planned equipment or manpower should change for any reason then another Method Statement shall be provided and additional information supplied to substantiate and differentiate it from other like activities.

7. Provide two each, a color timescaled Project Evaluation and Review Technique (PERT) charts using the activity box template of Logic – Early Start or any template requested by the Engineer

The TSLD Package shall be submitted with all the elements listed above; no partial submittals will be accepted.

The Engineer will review and comment on the submitted TSLD Package. The Contractor shall adjust the schedule to address comments made by the Engineer. Submit the complete TSLD Package to the Engineer for review until the Engineer finds it acceptable. The Engineer will not authorize progress payments until the Engineer acknowledges, in writing, a receipt of a TSLD Package that meets all the requirements of this Subsection.

After the acceptance of the initial TSLD and when construction starts submit four plotted progress schedules, two PERT charts and reports on all construction activities every two weeks (bi-weekly). This scheduled bi-weekly submittal shall also include an updated version of the project schedule on a 3-1/2 inch high-density floppy disk. The disk shall have all the information needed to re-create that time period's TSLD plot and reports. The bi-weekly submittal shall include but not be limited to an update of activities based on actual durations, additional new activities and any changes in duration or start or finish dates of any activity. Setting for software shall be such that changes in the activity's start or finish dates shall result in a change in all activities that it precedes.

Also, submit with every update, in report form, any changes to the progress schedule since the previous schedule submittal. During the period when there is no acceptable progress schedule, the Contractor shall make no claim for additional compensation for delays and waives the right to claim for additional compensation and/or time for that period of time. Progress schedules when submitted after the fact, more than four working days after the required submittal date, will not be considered timely. Therefore, it shall not be acceptable as evidence for delays. 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.

100 Working Days Or 140 Calendar Days. For contracts which have a contract amount more than one million dollars (\$1,000,000) 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:

- (1) have the information and requirements listed in A above;
- (2) provide additional reports and graphics available from the software as requested by the Engineer;
- (3) sufficient detail to allow at least weekly monitoring of the Contractor and subcontractor's operations;
- (4) 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
- (5) 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;
- (6) latest start and/or finish dates for critical phasing;
- (7) identify responsible subcontractor, supplier, and others for their respective activity;
- (8) no individual activity shall have duration of more than 20 calendar days unless requested and approved by the Engineer;
- (9) 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
- (10) incorporate all physical access and availability restraints.

(C) Early Completion TSLD. In the event, the Contractor submits and the Department receives a schedule, e.g., shorter than the contract time, such will not constitute an agreement to modify the contract time or completion date, nor will the receipt and acceptance of such a schedule incur any obligation by the Department. The Contractor shall be solely responsible for and shall accept all risks and any delays, other than those

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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 issued by the Department. The Department will not be responsible if the Contractor does not meet its accelerated schedule. Unless the Contractor can prove that, the Department is solely responsible for its failure to meet its schedule. The Department will be responsible for or obligated to accept the work before the completion date established by the Contract providing it meets all the requirements of the Contract Documents except for Contract Time.

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 he will achieve it. 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.

(D) Contractor Responsibilities. The Contractor shall not construe receipt of TSLD package to assign responsibility of performance or contingencies to the State. Submittal of and the Engineer's receipt of the TSLD Package will not imply the Department's approval of the schedule breakdown, its individual elements, and any critical path that may be shown. Acceptance of the schedule will not be deemed an agreement by the Department that the constructions means, methods and resources shown on the schedule will result in work that conforms to the contract requirements. The Contractor has the risk of all elements (whether or not shown) of the schedule and its execution. The Contractor has the responsibility to adjust forces, equipment and work schedules in order to meet the contract completion date.

When making TSLD submittals the Contractor shall show how they intend to make those adjustments and remain on the anticipated schedule and within the contract time.

The Contractor shall begin work according to the submitted TSLD after receiving the NTP. Prosecute the work in the order of the schedule expeditiously. The Engineer may require the Contractor to provide additional work forces and equipment to bring the operation into accordance with the submitted TSLD if failure to proceed as provided in the schedule or prosecution of the work in the current manner does not insure completion within the specified Contract time. This action by the State shall be not considered as a directive for constructive acceleration and therefore will be at no additional cost to the State.

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When the Contractor fails to insure completion within the specified time, the Engineer will consider employing an outside work force and equipment. The Engineer will charge the Contractor all cost to do the work including but not limited to, profit, employee benefits and fringes, bonds, taxes, insurance, overhead and depreciation for plant and equipment.

(E) Weekly Meeting. In addition to the bi-weekly schedule meetings the Contractor shall meet once a week with the State to have a general discussion on but not limited to, the progress of the project, potential problems, coordination of work, submittals etc. The personnel attending shall have the ability to make decisions and answer questions.

The Contractor shall bring to weekly meeting a detailed work schedule showing the next three weeks work. The three-week schedule shall show:

- (1) All construction events, traffic control and BMP related activities and are of 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 on the three-week schedule shall be clearly marked in red or marked in a manner that makes it clearly distinguishable from other paths and is acceptable to the Engineer;
- (4) The detail of the three-week schedule shall be significantly greater than the one presented in the TSLD. The Engineer will be the sole judge if the amount of detail presented is sufficient;
- (5) Critical submittals and RFI's that are expected to be needed in the next three weeks shall be listed also;
- (6) The three-week schedule shall have on each page the project title, project number, date created, period the schedule covers, Contractor's name and creator of the schedule.
- (7) 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 Contractor shall submit two days ahead of the weekly meeting a list of outstanding submittals and/or RFIs or issues that need resolution that will be needed in the near future with a rating of urgency. The status of which will be discussed at the weekly meeting.

In addition to the three-week schedule, the Contractor shall submit and be ready to discuss all of their required erosion control inspection reports for the past week.

108.06 Limitation of Operations. Conduct work with the least interference of traffic. Use care to the location of detours and the provisions for handling traffic. Do not create more work to the prejudice or detriment of work already started. The Engineer may require the Contractor to finish a section before starting work on additional sections if the opening of that section is essential to public convenience.

108.07 Character Of Workers, Methods, And Equipment. The Contractor shall at all times provide adequate supervision and sufficient labor and equipment to complete the work in the manner and within the time required by the contract.

(A) Character and Proficiency of Workers. All workers shall possess the proper license and/or certification, job classification, skill and experience necessary to properly perform the work assigned to them. All workers engaged in special work or skilled work such as bituminous courses or mixtures, installation of reinforcing steel, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed herein, otherwise, the Engineer may take action as prescribed herein.

At the written request of the Engineer, the Contractor shall remove the workers who do not carry out the assigned work in a proper and skillful manner or who are excessive or disrespectful, intemperate, disorderly or neglects or refuses to comply with directions given, or is otherwise objectionable. The worker shall be removed forthwith by the Contractor or subcontractor employing such worker and shall not be employed again in any portion of the work for two years on Federal-Aid, State, or County projects from the date of departure without the written consent of the Department.

Should the Contractor or subcontractor continue to employ, or again employ such person or persons on the project, the Engineer may

If the Contractor plans not to use the methods and equipment specified in the Contract the Contractor shall submit a written request that includes an explanation of the reasons for changing such methods and equipment. The written request shall include a full description of the methods and equipment that the Contractor is proposing. If the Engineer grants the request, the request will be on the condition that the Contractor shall be fully responsible for completing the work according to the Contract. If the Engineer concludes that the work does not meet Contract requirements after trial use of the requested methods or equipment, the Contractor shall stop using the requested method or equipment. Complete the remaining work with the specified methods and equipment. Remove and replace the deficient work with work of specified quality or take such other corrective action. The authorized requested methods or equipment will not change the basis of payment for the contract items involved nor the project contract time.

108.08 Temporary Suspension of Work. The Engineer will have the authority to suspend the project in whole or in part for such period as the Engineer may deem necessary. Causes for temporary suspension of work include, but are not limited to:

- (1) unsuitable weather;
- (2) other conditions out of the control of the Contractor which may prevent proper prosecution of the work or;
- (3) failure to prosecute or do the work according to the contract;
- (4) non-compliance with non-discrimination, Affirmative Action, EEO and wage and hour contract provisions.

The Contractor shall immediately comply with the Engineer's written order to suspend the affected work. Resume the suspended work only upon written directive from the Engineer.

When the Engineer orders such suspension of project work, the Engineer will assume the cost of eliminating the hazards and inconveniences caused by such suspension according to Subsection 104.02, 104.03, and 104.09 – Methods of Price Adjustment. The Engineer may do the work at no cost to the Contractor at the Engineer's option. The Engineer will apply this provision only to the portion of the work suspended.

When the Engineer causes suspension of work and the Engineer chooses not to do the work of eliminating the hazards and inconveniences, the Engineer will pay the Contractor to do the work to such amount as the Engineer may in writing find to be fair, reasonable and auditable. The amount compensated

will be the actual cost considered unavoidable by the Engineer. Take immediate steps, after consultation with the Engineer, to minimize costs.

When a contract phase or a controlling item of work is suspended more than two weeks, the Engineer may pay compensation for the following:

- (1) direct project overhead costs excluding overhead equipment plus a markup of 10% for profit and indirect general and administrative expenses;
- (2) overhead equipment at the Blue Book Rental Rate for actual operating hours;
- (3) rental at rate determined by cost divided by expected useful life for major construction materials used temporarily in the construction work when their actual period of use is extended by the suspension;
- (4) idle equipment at 50% of the applicable Blue Book Rental Rate without operation costs or equal to the direct cost;
- (5) Demobilization and mobilization of workers and equipment as extra work according to Subsection 104.02, 104.03, and 104.09 – Methods of Price Adjustment.

The Contractor shall submit a claim for additional compensation in writing within 20 calendar days of the start of the suspension. Submit the amount of claim and the detailed supporting documents to justify the claim in writing within 60 calendar days after the completion of the suspension period.

Notwithstanding the suspension which may still be in progress, the Engineer may make progress payments for costs incurred under provisions of this section upon submission of cost documentation which the Engineer deems acceptable.

If the Contractor causes the suspension of the work, do the work necessary to eliminate and repair hazards and inconveniences caused by such suspension at no cost to the State. If the Contractor fails to do the work as specified herein, the Department may do such work and the Contractor shall pay the cost and the Engineer will deduct the cost from payments due or may come due.

Before the Department assumes the cost of maintenance, the Contractor shall eliminate hazards and inconveniences and repair damages to the work that the Contractor could have done before the suspension. If the Contractor fails to do this work, the Department will do the work and the Contractor shall pay the

Engineer will exclude calendar days elapsing between the orders of the Engineer to suspend work and resume work for suspensions not the fault of the Contractor.

When the contract completion time is a fixed calendar date, it will be the date on which all work on the project shall be completed. Maintenance periods will not be included as part of the contract time unless specifically noted in the contract documents.

When multiple shifts are used to construct the project, the Department will not consider the hours worked over the normal eight working hours per day or night as part of a normal working day. A day will be charged if the Contractor worked more than four hours during a calendar day, excluding Saturday, Sunday and holidays, on an activity that is on the critical path of the project's progress schedule. When time allowed by the phasing in the contract documents is less than 8 hours during the normal daylight working hours, the amount of time worked to be charged a day shall be 50 percent of the allowed work time instead of 4 hours.

(B) Modifications of Contract Time.

(1) Extensions. For increases in the scope for work caused by alterations and additional work made under Subsection 104.02 – Changes, the Contractor will be granted a time extension only if the changes increase the length of the critical path for the Contract. If the Contractor believes that an extension of time is justified and is not adequately provided for in the Change Order, it must request the additional time sought in writing when the detailed cost breakdown required by Subsection 104.02 – Changes, is submitted. The Contractor must show how the time of performance for the critical path will be affected and must also support the time extension request with schedules and statements from its subcontractors, suppliers, and/or manufacturers. Compensation for any altered or additional work will be paid as provided in Subsection 104.02 – Changes.

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

(2) Delay for Permits. For excessive delays beyond the control of the Contractor in obtaining necessary permits, one day extension for each day delay may be granted by the Engineer,

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(c) and the Contractor is unable to work on critical path work for more than four hours on a day or 60 percent of the allowed work time during daylight hours, whichever is less.

Time extensions will be the exclusive relief granted and no additional compensation will be paid the Contractor for such delays.

(4) Contract Time Adjustment Due to Delays. Delays of contract work that merit a contract time adjustment will be computed as follows:

(a) The number of days delayed will not be counted as part of the contract time. The Contract completion date will be adjusted.

(b) During periods of delay of the work, the Contractor will be granted a time extension only if the delay prevents the Contractor from permitting the normal work force from proceeding with critical path work for at least four hours. If the Contractor believes that an extension of time is justified for a partial delay work, it must request the extension in writing at least five working days before the partial delay 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 it must also support its claim. The Contractor shall support its claim with statements from its subcontractors if their work on the critical path was delayed. A delay of work will not constitute a waiver of pre-existing Contractor delay

(5) Contractor Caused Delays. No time extension will be considered for the following:

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

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

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

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Closure and/or Obstruction	Saturday Estimated Public Inconvenience Per Quarter Hour						
	Midnight to 4:00 A.M.	4:00 A.M. to 6:00 A.M.	6:00 A.M. to 10:30 A.M.	10:30 A.M. to 2:30 P.M.	2:30 P.M. to 6:30 P.M.	6:30 P.M. to 10:00 P.M.	10:00 P.M. to Midnight
One Lane of Westbound Interstate Route H-1	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Two Lanes of Westbound Interstate Route H-1	N/A	N/A	N/A	\$5,000	\$17,000	\$2,000	N/A
Full Closure of All Westbound Interstate Route H-1 Lanes and Shoulders	*	*	*	*	*	*	*
Full Closure of All Eastbound Interstate Route H-1 Lanes and Shoulders	*	*	*	*	*	*	*
One Lane of Westbound Pearl City Off-Ramp	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Closure and/or Obstruction	Sunday Estimated Public Inconvenience Per Quarter Hour						
	Midnight to 4:00 A.M.	4:00 A.M. to 6:00 A.M.	6:00 A.M. to 10:30 A.M.	10:30 A.M. to 2:30 P.M.	2:30 P.M. to 6:30 P.M.	6:30 P.M. to 10:00 P.M.	10:00 P.M. to Midnight
One Lane of Westbound Interstate Route H-1	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Two Lanes of Westbound Interstate Route H-1	N/A	N/A	N/A	\$2,000	\$4,500	\$500	N/A
Full Closure of All Westbound Interstate Route H-1 Lanes and Shoulders	*	*	*	*	*	*	*
Full Closure of All Eastbound Interstate Route H-1 Lanes and Shoulders	*	*	*	*	*	*	*
One Lane of Westbound Pearl City Off-Ramp	N/A	N/A	N/A	N/A	N/A	N/A	N/A

* NOTE: The State reserves the right to calculate public inconvenience costs for situations unaccounted for.

The Engineer may consider delays caused by a problem beyond the Contractor's control in opening lane(s) closure on time for not charging liquidated damages. Equipment breakdown is not a cause to waive liquidated damages.

Before closing lane(s), the Contractor shall submit a contingency plan for acceptance by the Engineer which will indicate what steps and efforts the Contractor shall take to open lane(s) to the public on time. The Engineer will

not allow lane closures until the Engineer accepts the contingency plan. The Engineer will not make separate payment for work to implement a contingency plan.

The Contractor shall complete the work within the number of working days specified in the contract. The contract will begin officially from the date designated in the NTP. If the contract specifies a calendar date as the date of completion, the Contractor shall complete the work by that date.

Delay in the completion of the work within the required time will inconvenience the public, obstruct traffic and interfere with business.

The Contractor shall pay \$19,500 to the Department for each calendar day after expiration of the Contract Time in which the Contract has not been Substantially Completed, as defined in Subsection 101.03 – Definitions. The Contractor shall not pay by way of a penalty. The Department may deduct the amount from monies due or that may become due under the Contract if the Contractor does not pay the liquidated damages.

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. These liquidated damages will be \$3,600 per calendar day. Liquidated damages shall not be assessed for the period between Substantial Completion of the work and the time the Punchlist is delivered to the Contractor. The Engineer will not assess liquidated damages for failure to complete the plant establishment period or post construction survey of the viaduct deck concrete overlay within the Contract Time.

The findings of the Director shall be accepted by the parties hereto as final, but any allowance of time and remission of charges shall in no other manner affect the rights or obligations of the parties under this contract, nor be construed to prevent action under Subsection 108.12 - Default and Termination of Contract in case the Contractor fails in the judgement of the Director to make reasonable and satisfactory progress after such allowance of time has been granted.

(a) Liquidated Damages Upon Termination. If the Department so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages for such reasonable time as may be required for final completion of work.

(b) Liquidated Damages In The Absence Of Termination. If the Department does not terminate the Contractor's right to proceed, the

resulting damage will consist of such liquidated damages until the work is completed or accepted.

108.12 Default and Termination of Contract.

(A) If the Contractor:

- (1)** Fails to begin the work under the contract within the time specified in the Notice to Proceed, or
- (2)** Fails to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work, or
- (3)** Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- (4)** Discontinues the prosecution of the work, or
- (5)** Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- (6)** Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- (7)** Allows any final judgement to stand against the Contractor unsatisfied for a period of 10 days, or
- (8)** Makes an assignment for the benefit of creditors, or
- (9)** Fails to comply with 49 CFR Part 26, 'Participation by Disadvantaged Business Enterprises in Department of Transportation Programs', or
- (10)** For any other cause whatsoever, fails to carry on the work in an acceptable manner, or
- (11)** Fails to submit required project documentation, including project progress schedule, labor compliance reports and payroll records, on time, or
- (12)** Makes a false or misleading statement in the contract, including declaration, certification, affidavit, warranty, or verification submitted with the project or engage in conducts perpetuating a falsehood, fraud or erroneous impression relating to this project, or

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(13) Is suspended due to HRS 104-25,

the Engineer will give notice in writing to the Contractor and its surety of such delay, neglect, or default.

The Department may take the prosecution of the work out of the hands of the Contractor or surety without violating the contract if the Contractor or surety receives written notification from the Engineer of such delay, neglect or default and the Contractor or surety fails to proceed according to the notice to remedy the delay, neglect or default, within a period of 10 days after receipt of said notice. The Department may appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods required for the completion of the project according to the contract.

All costs and charges incurred by the Department, 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 the Contractor 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 to the Department the amount of such excess.

The Department may bar Contractors from bidding and working on construction projects of the Department for two consecutive years from the date of termination. This includes its owners, officers, and managerial and supervisory staff terminated under provisions of this section.

(B) Erroneous Termination For Default. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

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

(D) Termination For Convenience.

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

(2) 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. The Department 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.

(3) Right to Construction and Goods. The Department may require the Contractor to transfer title and deliver to the State in the manner and to the extent ordered by the Department:

(a) Any completed constructions; and

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

The Contractor shall protect and preserve property in the possession of the Contractor in which the State has an interest. If the Director does not exercise this right, the Contractor shall use best efforts to sell such construction, goods, and construction materials according to the standards of Section 490:2-706, HRS. This in no way implies that the State has breached the contract by exercise of the termination for convenience clause.

(4) Compensation.

(a) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Subchapter 15, Chapter 3-122, HAR, bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Department may pay the Contractor, if at all, an amount set according to Subparagraph 108.12(D)(4)(c)2.

(b) The Department and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of construction, supplies, and construction materials under paragraph 108.12(D)(3) of this clause, and the contract price of the work not terminated.

(c) Absent complete agreement under subparagraph 108.12(D)(4)(b) of this paragraph, the Department shall pay the Contractor the following amounts, provided payments under subparagraph 108.12(D)(4)(b) shall not duplicate payments under this paragraph the total (without duplication of any items) of:

1. The cost of all contract work performed before the effective date of the notice of termination work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

2. Costs of settling and paying claims arising from the termination of subcontracts or orders pursuant to paragraph 108.12(D)(2) of this clause. These costs

must not include costs paid according to subparagraph 108.12(D)(4)(c)1 of this paragraph;

3. The reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract; and

4. The total sum to be paid the Contractor under this paragraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of any sales of construction supplies, and construction materials under paragraph 108.12(D)(3) of this clause, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under subparagraphs 108.12(D)(4)(b) and 108.12(D)(4)(c) of this paragraph shall be according to Chapter 3-123, HAR.

108.13 Emergency and Legally Justifiable Cause for Termination of Contract. The Engineer may end the contract when a national emergency or other reasons beyond the control of the Engineer makes the termination necessary. The Department will give the Contractor a written notice of termination. The Engineer will pay the Contractor for work done and accepted at the contract unit prices or lump sum prices upon termination. The Engineer will reimburse the Contractor for required expenditures in preparing for and moving to and from the project site. Also, the Engineer will reimburse the Contractor for required expenditures not compensated for. The Contractor shall not submit claims for interest or loss of anticipated profits.

The Engineer will purchase the materials from the Contractor at actual cost per receipted bills. The Contractor shall get these materials to the worksite at locations designated by the Engineer. The Engineer will inspect and test these materials for acceptance. The Contractor shall not have incorporated these materials in the work yet. Store and maintain these material properly."

END OF SECTION

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