

Amend **Section 108 – PROSECUTION AND PROGRESS** to read as follows:

“SECTION 108 – PROSECUTION AND PROGRESS

108.01 Notice to Proceed (NTP). A Notice To Proceed will be issued to the Contractor for the Contract.

Separate Start Work Dates will be issued to the Contractor for each work order created. The Start Work Date issued for the work order will begin charging of time specified to complete the work order. Time specified to complete the work order will be followed in accordance with Subsection 108.05 - Contract Time. Liquidated damages for each work order will be enforced in accordance with Subsection 108.08 - Liquidated Damages for Failure to Complete the Work or Portions of the Work on Time.

In the event that the Contractor fails to start physical work within the time specified, the Engineer may terminate the contract in accordance with Subsection 108.11 – Termination of Contract for Cause.

During the period between the issuance of a work order and the Start Work Date the Contractor should adjust work forces, equipment, schedules, and procure materials and required permits, prior to beginning physical work.

Any physical work done prior to the Start Work Date will be considered unauthorized work. If the Engineer does not direct that the unauthorized work be removed, it shall be paid for after the Start Work Date and only if it is acceptable.

The Contractor shall notify the Engineer at least twenty four (24) hours before restarting physical work after a suspension of work pursuant to Subsection 108.10 – Suspension of Work.

Once physical work has begun, the Contractor shall work expeditiously and pursue the work diligently to completion with the contract time. If a portion of the work is to be done in stages, the Contractor shall leave the area safe and usable for the user agency and the public at the end of each stage.

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

108.03 Preconstruction Submittals. The awardee shall submit to the Engineer for information and review the pre-construction submittals within twenty one (21) calendar days from award. Until the items listed below are received and found acceptable by the Engineer, the Contractor shall not start physical work

47 unless otherwise authorized to do so in writing and subject to such conditions set
48 by the Engineer. Charging of Contract Time will not be delayed, and additional
49 contract time will not be granted due to Contractor delay in submitting acceptable
50 preconstruction submittals. No progress payment will be made to the Contractor
51 until the Engineer acknowledges, in writing, receipt of the following preconstruction
52 submittals acceptable to the Engineer:

53
54 (1) List of the Superintendent and other Supervisory Personnel, and
55 their contact information.

56
57 (2) Name of person(s) authorized to sign for the Contractor.

58
59 (3) Work Schedule including hours of operation.

60
61 (4) Initial Progress Schedule (See Subsection 108.06 – Progress
62 Schedule).

63
64 (5) Water Pollution and Siltation Control Submittals, including Site-
65 Specific Best Management Practice Plan.

66
67 (6) Solid Waste Disposal form.

68
69 (7) Tax Rates.

70
71 (8) Insurance Rates.

72
73 (9) Certificate of Insurance, satisfactory to the Engineer, indicating that
74 the Contractor has in place all insurance coverage required by the contract
75 documents.

76
77 (10) Schedule of agreed prices.

78
79 (11) List of suppliers.

80
81 (12) Traffic Control Plan, if applicable.

82
83 **108.04 Character and Proficiency of Workers.** The Contractor shall at all
84 times provide adequate supervision and sufficient labor and equipment for
85 prosecuting the work to full completion in the manner and within the time required
86 by the contract. The superintendent and all other representatives of the Contractor
87 shall act in a civil and honest manner in all dealings with the Engineer, all other
88 State officials and representatives, and the public, in connection with the work.

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

93 The Engineer may direct the removal of any worker(s) who does not carry
94 out the assigned work in a proper and skillful manner or who is disrespectful,
95 intemperate, violent, or disorderly. The worker shall be removed forthwith by the
96 Contractor and will not work again without the written permission of the Engineer.
97

98 **108.05 Contract Time.**

99

100 **(A) Calculation of Contract Time.** When the contract time is on a
101 working day basis, the total contract time allowed for the performance of the
102 work will be the number of working days shown in the contract plus any
103 additional working days authorized in writing as provided hereinafter. The
104 count of elapsed working days to be charged against contract time, will
105 begin from the Start Work Date and will continue consecutively to the date
106 of Substantial Completion. When multiple shifts are used to perform the
107 work, the State will not consider the hours worked over the normal eight
108 working hours per day or night as an additional working day.
109

110 When the contract is on a calendar day basis, the total contract time
111 allowed for the performance of the work will be the number of days shown
112 in the contract plus any additional days authorized in writing as provided
113 hereinafter. The count of elapsed days to be charged against contract time
114 will begin from the Start Work Date and will continue consecutively to the
115 date of Substantial Completion. The Engineer will exclude days elapsing
116 between the orders of the Engineer to suspend work and resume work for
117 suspensions not the fault of the Contractor.
118

119 **(B) Modifications of Contract Time.** Whenever the Contractor
120 believes that an extension of contract time is justified, the Contractor shall
121 serve written notice on the Engineer not more than five working days after
122 the occurrence of the event that causes a delay or justifies a contract time
123 extension. Contract time may be adjusted for the following reasons or
124 events, but only if and to the extent the critical path has been affected:
125

126 **(1) Changes in the Work, Additional Work, and Delays**
127 **Caused by the State.** If the Contractor believes that an extension
128 of time is justified on account of any act or omission by the State and
129 is not adequately provided for in a field order or change order, it must
130 request the additional time as provided above. At the request of the
131 Engineer, the Contractor must show how the critical path will be
132 affected and must also support the time extension request with
133 schedules, as well as statements from its subcontractors, suppliers,
134 or manufacturers, as necessary. Claims for compensation for any
135 altered or additional work will be determined pursuant to Subsection
136 104.02 – Changes.
137

138 Additional time to perform the extra work will be added to the
139 time allowed in the contract without regard to the date the change
140 directive was issued, even if the contract completion date has
141 passed. A change requiring time issued after contract time has
142 expired will not constitute an excusal or waiver of pre-existing
143 Contractor delay.
144

145 **(2) Delay for Permits.** For delays in the routine application and
146 processing time required to obtain necessary permits, including
147 permits to be obtained from State agencies, the Engineer may grant
148 an extension provided that the permit takes longer than thirty (30)
149 days to acquire and the delay is not caused by the Contractor, and
150 provided that as soon as the delay occurs, the Contractor notifies the
151 Engineer in writing that the permits are not available. Permits
152 required by the contract that take less than thirty (30) days to acquire
153 from the time which the appropriate documents are granted shall be
154 acquired between Notice to Proceed and Start Work Date or
155 accounted for in the contractor's progress schedule. Time
156 extensions will be the exclusive relief granted on account of such
157 delays.
158

159 **(3) Delays Beyond Contractor's Control.** For delays caused
160 by acts of God, a public enemy, fire, inclement weather days or
161 adverse conditions resulting therefrom, earthquakes, floods,
162 epidemics, quarantine restrictions, labor disputes impacting the
163 Contractor or the State, freight embargoes and other reasons
164 beyond the Contractor's control, the Contractor may be granted an
165 extension of time provided that:
166

167 **(a)** In the written notice of delay to the Engineer, the
168 Contractor describes possible effects on the completion date
169 of the contract. The description of delays shall:
170

171 1. State specifically the reason or reasons for the
172 delay and fully explain in a detailed chronology how the
173 delay affects the critical path.

174
175 2. Include copies of pertinent documentation to
176 support the time extension request.

177
178 3. Cite the anticipated period of delay and the time
179 extension requested.

180
181 4. State either that the above circumstances have
182 been cleared and normal working conditions restored
183 as of a certain day or that the above circumstances will
184 continue to prevent completion of the project.

185
186 (b) The Contractor shall notify the Engineer in writing when
187 the delay ends. Time extensions will be the exclusive relief
188 granted and no additional compensation will be paid the
189 Contractor for such delays.

190
191 **(4) Delays in Delivery of Materials or Equipment.** For delays
192 in delivery of materials or equipment, which occur as a result of
193 unforeseeable causes beyond the control and without fault of the
194 Contractor, its subcontractor(s) or supplier(s), time extensions shall
195 be the exclusive relief granted and no additional compensation will
196 be paid the Contractor on account of such delay. The delay shall not
197 exceed the difference between the originally scheduled delivery date
198 and the actual delivery date. The Contractor may be granted an
199 extension of time provided that it complies with the following
200 procedures:

201
202 (a) The Contractor's written notice to the Engineer must
203 describe the delays and state the effect such delays may have
204 on the critical path.

205
206 (b) The Contractor, if requested, must submit to the
207 Engineer within five (5) days after a firm delivery date for the
208 material and equipment is established, a written statement
209 regarding the delay. The Contractor must justify the delay as
210 follows:

211
212 1. State specifically all reasons for the delay.
213 Explain in a detailed chronology the effect of the delay
214 on the critical path.

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

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

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

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

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

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

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

(d) Delays caused by the failure of the Contractor to make submittals in a timely manner for review and acceptance by the Engineer, such as but not limited to shop drawings, descriptive sheets, material samples, and color samples except as covered in Subsection 108.05(B)(3) – Delays Beyond Contractor’s Control and 108.05(B)(4) – Delays in Delivery of Materials or Equipment.

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

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

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

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

108.06 Progress Schedules.

(A) **Forms of Schedule.** All schedules shall be submitted using the specific computer program designated in the bid documents. If no such scheduling software program is designated, then all schedules shall be submitted using the latest version of Microsoft Project by Microsoft or approved equivalent software program.

Schedule submittals shall be as follows:

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

299 (a) The major features of work, such as but not limited to
300 BMP installation, grubbing, roadway excavation, structure
301 excavation, structure construction, shown in the chronological
302 order in which the Contractor proposes to work that feature or
303 work and its location on the project. The schedule shall
304 account for normal inclement weather, unusual soil or other
305 conditions that may influence the progress of the work,
306 schedules, and coordination required by any utility, off or on-
307 site fabrications, and other pertinent factors that relate to
308 progress;

309
310 (b) All features listed or not listed in the contract
311 documents that the Contractor considers a controlling factor
312 for the timely completion of the contract work.

313
314 (c) The time span and sequence of the activities or events
315 for each feature, and its interrelationship and
316 interdependencies in time and logic to other features in order
317 to complete the project.

318
319 (d) The total anticipated time necessary to complete work
320 required by the contract.

321
322 (e) A chronological listing of critical intermediate dates or
323 time periods for features or milestones or phases that can
324 affect timely completion of the project.

325
326 (f) Major activities related to the location on the project.

327
328 (g) Non-construction activities, such as submittal and
329 acceptance periods for shop drawings and material,
330 procurement, testing, fabrication, mobilization, and
331 demobilization or order dates of long lead material.

332
333 (h) Set schedule logic for out of sequence activities to
334 retain logic. In addition, open ends shall be non-critical.

335
336 (i) Show target bars for all activities.

337
338 (j) Vertical and horizontal sight lines both major and minor
339 shall be used as well as a separator line between groups. The
340 Engineer will determine frequency and style.

341
342 (k) The file name, print date, revision number, data and
343 project title and number shall be included in the title block.
344

(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 One Hundred (100) Working Days Or One Hundred Forty (140) Calendar Days. For contracts which have a contract amount more than \$2,000,000 or contract time of more than one hundred (100) working days or one hundred forty (140) calendar days, the Contractor shall submit a Timed-Scaled Logic Diagram (TSLD) meeting the following requirements and having these essential and distinctive elements:

(a) The information and requirements listed in Subsection 108.06(A)(1) – For Contracts \$2,000,000 or Less or For Contract Time one hundred (100) Working Days or one hundred forty (140) Calendar Days or Less.

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

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

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

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

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

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

389 (h) No individual activity shall have duration of more than
390 twenty (20) calendar days unless requested and approved by
391 the Engineer.
392

393 (i) All activities shall have work breakdown structure
394 codes and activity codes. The activity codes shall have
395 coding that incorporates information for phase, location, who
396 is responsible for doing work and type of operation and activity
397 description.
398

399 (j) Incorporate all physical access and availability
400 restraints.
401

402 **(B) Inspection and Testing.** All schedules shall provide reasonable
403 time and opportunity for the Engineer to inspect and test each work activity.
404

405 **(C) Engineer's Acceptance of Progress Schedule.** The submittal of,
406 and the Engineer's receipt of any progress schedule, shall not be deemed
407 an agreement to modify any terms or conditions of the contract. Any
408 modifications to the contract terms and conditions that appear in or may be
409 inferred from an acceptable schedule will not be valid or enforceable unless
410 and until the Engineer exercises discretion to issue an appropriate change
411 order. Nor shall any submittal or receipt imply the Engineer's approval of
412 the schedule's breakdown, its individual elements, any critical path that may
413 be shown, nor shall it obligate the State to make its personnel available
414 outside normal working hours or the working hours established by the
415 Contract in order to accommodate such schedule. The Contractor has the
416 risk of all elements (whether or not shown) of the schedule and its
417 execution. No claim for additional compensation, time, or both, shall be
418 made by the Contractor or recognized by the Engineer for delays during any
419 period for which an acceptable progress schedule or an updated progress
420 schedule as required by Subsection 108.06(E) – Contractor's Continuing
421 Schedule Submittal Requirements had not been submitted. Any
422 acceptance or approval of the schedule shall be for general format only and
423 shall not be deemed an agreement by the State that the construction
424 means, methods, and resources shown on the schedule will result in work
425 that conforms to the contract requirements or that the sequences or
426 durations indicated are feasible.
427

428 **(D) Initial Progress Schedule.** The Contractor shall submit an initial
429 progress schedule. The initial progress schedule shall consist of the
430 following:
431

432 (1) Four sets of the TSLD schedule.
433

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

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

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

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

(a) Has a duration longer than five (5) days.

(b) Is a milestone activity.

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

(d) Is a critical path activity.

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

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

(a) Quantity, type, make, and model of equipment.

(b) The manpower to do the work, specifying worker classification.

(c) The production rate per eight (8)-hour day, or the working hours established by the contract documents needed to meet the time indicated on the schedule. If the production rate is not for eight (8) hours, the number of working hours shall be indicated.

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

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

(E) Contractor's Continuing Schedule Submittal Requirements.

After the acceptance of the initial TSLD and when construction starts, the Contractor shall submit four plotted progress schedules, two PERT charts, and reports on all construction activities every two (2) weeks (bi-weekly). This scheduled bi-weekly submittal shall also include an updated version of the project schedule in a computerized software format as specified by the Engineer. The submittal shall have all the information needed to re-create that time period's TSLD plot and reports. The bi-weekly submittal shall include, but not limited to, an update of activities based on actual durations, all new activities and any changes in duration or start or finish dates of any activity.

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

The Contractor shall submit updates of the anticipated work completion graph, equipment listing, manpower requirement graph or method statement when requested by the Engineer. The Contractor shall submit such updates within four (4) 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.

521 **(H) Accelerated Schedule; Early Completion.** If the Contractor
522 submits an accelerated schedule (shorter than the contract time), the
523 Engineer's review and acceptance of an accelerated schedule does not
524 constitute an agreement or obligation by the State to modify the contract
525 time or completion date. The Contractor is solely responsible for and shall
526 accept all risks and any delays, other than those that can be directly and
527 solely attributable to the State, that may occur during the work, until the
528 contract completion date. The contract time or completion date is
529 established for the benefit of the State and cannot be changed without an
530 appropriate change order or Substantial Completion granted by the State.
531 The State may accept the work before the completion date is established,
532 but is not obligated to do so.
533

534 If the TSLD indicates an early completion of the project, the
535 Contractor shall, upon submittal of the schedule, cooperate with the
536 Engineer in explaining how it will be achieved. In addition, the Contractor
537 shall submit the above explanation in writing which shall include the State's
538 part, if any, in achieving the early completion date. Early completion of the
539 project shall not rely on changes to the Contract Documents unless
540 approved by the Engineer.
541

542 **(I) Contractor Responsibilities.** The Contractor shall promptly
543 respond to any inquiries from the Engineer regarding any schedule
544 submission. The Contractor shall adjust the schedule to address directives
545 from the Engineer and shall resubmit the TSLD package to the Engineer
546 until the Engineer finds it acceptable.
547

548 The Contractor shall perform the work in accordance with the
549 submitted TSLD. The Engineer may require the Contractor to provide
550 additional work forces and equipment to bring the progress of the work into
551 conformance with the TSLD at no increase in contract price or contract time
552 whenever the Engineer determines that the progress of the work does not
553 insure completion within the specified contract time.
554

555 **108.07 Weekly Meeting.** In addition to the bi-weekly schedule meetings, the
556 Contractor shall be available to meet once a week with the Engineer at the time
557 and place as determined by the Engineer to discuss the work and its progress
558 including but not limited to, the progress of the project, potential problems,
559 coordination of work, submittals, erosion control reports, etc. The Contractor's
560 personnel attending shall have the authority to make decisions and answer
561 questions.
562

The Contractor shall bring to weekly meetings a detailed work schedule showing the next three (3) weeks' work. Number of copies of the detailed work schedule to be submitted will be determined by the Engineer. The three (3)-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 (3)-week schedule shall show:

- (a) 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 (3) weeks. This is for the State to use to plan its manpower requirements for that time period.
- (b) The duration of all events and delays.
- (c) 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.
- (d) Critical submittals and requests for information (RFI's).
- (e) The project title, project number, date created, period the schedule covers, Contractor's name and creator of the schedule on each page.

Two (2) days prior to each weekly meeting, the Contractor shall submit a list of outstanding submittals, RFIs and issues that require discussion.

108.08 Liquidated Damages for Failure to Complete the Work or Portions of the Work on Time. The actual amount of damages resulting from the Contractor's failure to complete the contract in a timely manner is difficult to accurately determine. Therefore, the amount of such damages shall be liquidated damages as set forth herein and in the special provisions. The State may, at its discretion, deduct the amount from monies due or that may become due under the contract.

When the Contractor fails to reach substantial completion of the work for which liquidated damages are specified, within the time or times fixed in the contract or any extension thereof, in addition to all other remedies for breach that may be available to the State, the Contractor shall pay liquidated damages to the State, in the amount of \$5,000 per working day.

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

608 **(B) Liquidated Damages for Failure to Complete the Punchlist.** The
609 Contractor shall complete the work on any punchlist created after the pre-
610 final inspection, within the contract time or any extension thereof.

611
612 When the Contractor fails to complete the work on such punchlist
613 within the contract time or any extension thereof, the Contractor shall pay
614 liquidated damages to the State of 20 percent of the amount of liquidated
615 damages established for failure to substantially complete the work within
616 contract time. Liquidated damages shall not be assessed for the period
617 between:

618
619 (1) Notice from the Contractor that the project is substantially
620 complete and the time the punchlist is delivered to the Contractor.

621
622 (2) The date of the completion of punchlist as determined by the
623 Engineer and the date of the successful final inspection, and

624
625 (3) The date of the Final Inspection that results in Substantial
626 Completion and the receipt by the Contractor of the written notice of
627 Substantial Completion.

628
629 **(C) Actual Damages Recoverable If Liquidated Damages Deemed**
630 **Unenforceable.** In the event a court of competent jurisdiction holds that
631 any liquidated damages assessed pursuant to this contract are
632 unenforceable, the State will be entitled to recover its actual damages for
633 Contractor's failure to complete the work, or any designated portion of the
634 work within the time set by the contract.

635
636 **108.09 Rental Fees for Unauthorized Lane Closure or Occupancy.** In
637 addition to all other remedies available to the State for Contractor's breach of the
638 terms of the contract, the Engineer will assess the rental fees in the amount of
639 \$2,500 for every one- to fifteen-minute increment for each roadway lane closed to
640 public use or occupied beyond the time periods authorized in the contract or by the
641 Engineer. The State may, at its discretion, deduct the amount from monies due or
642 that may become due under the contract. The rental fee may be waived in whole
643 or part if the Engineer determines that the unauthorized period of lane closure or
644 occupancy was due to factors beyond the control of the Contractor. Equipment
645 breakdown is not a cause to waive liquidated damages.

646
647 **108.10 Suspension of Work.**

648
649 **(A) Suspension of Work.** The Engineer may, by written order, suspend
650 the performance of the work, either in whole or in part, for such periods as
651 the Engineer may deem necessary, for any cause, including but not limited
652 to:
653

(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 not 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.

(d) Provide adequate supervision on the jobsite.

(5) The convenience of the State.

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

(C) Reimbursement to Contractor. In the event that the Contractor is ordered by the Engineer in writing as provided herein to suspend all work under the contract for the reasons specified in Subsections 108.10(A)(2), 108.10(A)(3), or 108.10(A)(5) of the "Suspension of Work" paragraph, the Contractor may be reimbursed for actual direct costs incurred on work at the jobsite, as authorized in writing by the Engineer, including costs expended for the protection of the work. An allowance of 5 percent for indirect categories of delay costs will be paid on any reimbursed direct costs, including extended branch and home-office overhead and delay impact costs. No allowance will be made for anticipated profits. Payment for equipment which is ordered to standby during such suspension of work shall be made as described in Subsection 109.06(H) - Idle and Standby Equipment.

(D) Cost Adjustment. If the performance of all or part of the work is suspended for reasons beyond the control of the Contractor except an adjustment shall be made for any increase in cost of performance of this

contract (excluding profit) necessarily caused by such suspension, and the contract modified in writing accordingly.

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

(1) For weather related conditions.

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

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

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

Any claims for such compensation shall be filed in writing with the Engineer within thirty (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, or commits any other material breach of this contract, and further fails within seven (7) 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

746 delay or other breach of contract. In such event, the State may take over
747 the work, perform the same to completion, by contract or otherwise, and
748 may take possession of, and utilize in completing the work, the materials,
749 appliances, and plants as may be on the site of the work and necessary,
750 therefore. Whether or not the Contractor's right to proceed with the work is
751 terminated, the Contractor and the Contractor's sureties shall be liable for
752 any damage to the State resulting from the Contractor's refusal or failure to
753 complete the work within the specified time.

754
755 **(B) Additional Rights and Remedies.** The rights and remedies of the
756 State provided in this contract are in addition to any other rights and
757 remedies provided by law.

758
759 **(C) Costs and Charges.** All costs and charges incurred by the State,
760 together with the cost of completing the work under contract, will be
761 deducted from any monies due or which would or might have become due
762 to the Contractor had it been allowed to complete the work under the
763 contract. If such expense exceeds the sum which would have been payable
764 under the contract, then the Contractor and the surety shall be liable and
765 shall pay the State the amount of the excess.

766
767 In case of termination, the Engineer will limit any payment to the
768 Contractor to the part of the contract satisfactorily completed at the time of
769 termination. Payment will not be made until the work has satisfactorily been
770 completed and all required documents, including the tax clearance required
771 by Subsection 109.11 – Final Payment are submitted by the Contractor.
772 Termination shall not relieve the Contractor or Surety from liability for
773 liquidated damages.

774
775 **(D) Erroneous Termination for Cause.** If, after notice of termination of
776 the Contractor's right to proceed under this section, it is determined for any
777 reason that good cause did not exist to allow the State to terminate as
778 provided herein, the rights and obligations of the parties shall be the same
779 as, and the relief afforded the Contractor shall be limited to, the provisions
780 contained in Subsection 108.12 – Termination for Convenience.

781 782 **108.12 Termination For Convenience.**

783
784 **(A) Terminations.** The Director may, when the interests of the State so
785 require, terminate this contract in whole or in part, for the convenience of
786 the State. The Director will give written notice of the termination to the
787 Contractor specifying the part of the contract terminated and when
788 termination becomes effective.

789
790 **(B) Contractor's Obligations.** The Contractor shall incur no further
791 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.

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

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

(D) Compensation.

(1) 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 HAR Subchapter 15, Chapter 3-122. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Engineer may pay the Contractor, if at all, an amount set in accordance with Subsection 108.12(D)(3).

(2) The Engineer 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 Subsection 108.12(C)(3), and the proportionate contract price of the work not terminated.

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

(a) The cost of all contract work performed prior to the effective date of the notice of termination work plus a 5 percent markup on the actual direct costs, including amounts paid to subcontractor, 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 markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss. No anticipated profit or consequential damage will be due or paid.

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

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

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

108.13 Pre-Final and Final Inspections.

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

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

(1) All written guarantees required by the contract.

(2) Two accepted final field-posted drawings as specified in Section 648 – Field-Posted Drawings;

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

(4) Certificate of Plumbing and Electrical Inspection.

(5) Certificate of building occupancy as required.

(6) Certificate of Soil and Wood Treatments.

(7) Certificate of Water System Chlorination.

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

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

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

(11) And any other final items and submittals required by the contract documents.

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

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

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

After the Engineer is satisfied that the project appears substantially complete a final inspection shall be scheduled within ten (10) working days after receipt of the Contractor's latest letter of notification that the project is ready for final inspection.

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

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

When the date of substantial completion has been determined by the State, liquidated damages for the failure to complete the punchlist, if due to the State will be assessed in pursuant to Subsection 108.08(B) - Liquidated Damages for Failure to Complete the Punchlist.

(D) Punchlist; Clean Up and Final Inspection. Upon receiving a punchlist after pre-final inspection, the Contractor shall promptly devote all required time, labor, equipment, materials and incidentals to correct and remedy all punchlist deficiencies. The Engineer may add to or otherwise modify this punchlist until substantial completion of the project.

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

Final inspection will occur within ten (10) working days after the Contractor notifies the Engineer in writing that all punchlist deficiencies remaining after the pre-final inspection have been completed and the Engineer concurs. If the Engineer determines that deficiencies still remain at the final inspection, the work will not be accepted and the Engineer will notify the Contractor, in writing, of the deficiencies which shall be corrected and the steps above repeated.

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

108.14 Substantial Completion and Final Acceptance.

(A) Substantial Completion. When the Engineer finds that the Contractor has satisfactorily completed all work for the project in compliance with the contract, with the exception of the planting period and the plant establishment period, the Engineer will notify the Contractor, in writing, of the project's substantial completion, effective as of the date of the final inspection. The substantial completion date shall determine end of contract time and relieve contractor of any additional accumulation of liquidated damages for failure to complete the punchlist.

(B) Final Acceptance. When the Engineer finds that the Contractor has satisfactorily completed all contract work in compliance with the contract including all plant establishment requirements, and all the materials have been accepted by the State, the Engineer will issue a Final Acceptance Letter. The Final Acceptance date shall determine the commencement of all guaranty periods subject to Subsection 108.16 – Contractor's Responsibility for Work; Risk of Loss or Damage.

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

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

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

108.17 Guarantee of Work.

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

(2) When the Engineer determines that repairs or replacements of any guaranteed work and equipment is necessary due to materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract, the Contractor shall, at no increase in contract price or contract time, and within five (5) working days of receipt of written notice from the State, commence to all of the following:

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

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

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

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

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

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

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

1067
1068 (2) Any extension of time.

1069
1070 (3) Any possession taken by the Engineer.

1071
1072 A waiver of any notice requirement or of any noncompliance with the
1073 contract will not be held to be a waiver of any other notice requirement or any other
1074 noncompliance with the contract.

1075
1076 **108.19 Final Settlement of Contract.**

1077
1078 **(A) Closing Requirements.** The contract will be considered settled
1079 after the project acceptance date and when the following items have been
1080 satisfactorily submitted, where applicable:

1081
1082 (1) All written guarantees required by the contract.

1083
1084 (2) Complete and certified weekly payrolls for the Contractor and
1085 its subcontractor's.

1086 (3) Certificate of plumbing and electrical inspection.

1087
1088 (4) Certificate of building occupancy.

1089
1090 (5) Certificate for soil treatment and wood treatment.

1091
1092 (6) Certificate of water system chlorination.

1093
1094 (7) Certificate of elevator inspection, boiler and pressure pipe
1095 installation.

1096
1097 (8) Tax clearance.

1098
1099 (9) All other documents required by the Contract or by law.

1100
1101 **(B) Failure to Meet Closing Requirements.** The Contractor shall meet
1102 the applicable closing requirements within sixty (60) days from the date of
1103 Project Acceptance or the agreed to Punchlist complete date. Should the
1104 Contractor fail to comply with these requirements, the Engineer may
1105 terminate the contract for cause."

1106
1107
1108
1109
1110 **END OF SECTION 108**