

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

2  
3 **“108 – PROSECUTION AND PROGRESS**

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5 **108.01 Notice to Proceed (NTP).** A Notice To Proceed will be issued to the  
6 Contractor.

7  
8 The Contractor shall be allowed up to 14 calendar days after the Engineer  
9 accepts the Site-Specific Best Management Practice Plan to begin physical work.  
10 The Start Work Date will be established within this 14 calendar day period.  
11 Charging of Contract Time will begin on the Start Work Date. The Contractor  
12 shall notify the Engineer, in writing, at least five working days before beginning  
13 physical work.

14  
15 In the event that the Contractor fails to start physical work within the time  
16 specified, the Engineer may terminate the contract in accordance with  
17 Subsection 108.11 – Termination of Contract for Cause.

18  
19 During the period between the issuance of a work order and the Start  
20 Work Date the Contractor should adjust work forces, equipment, schedules, and  
21 procure materials and required permits, prior to beginning physical work.

22  
23 Any physical work done prior to the Start Work Date will be considered  
24 unauthorized work. If the Engineer does not direct that the unauthorized work be  
25 removed, it shall be paid for after the Start Work Date and only if it is acceptable.

26  
27 The Contractor shall notify the Engineer at least 24 hours before restarting  
28 physical work after a suspension of work pursuant to Subsection 108.10 –  
29 Suspension of Work.

30  
31 Once physical work has begun, the Contractor shall work expeditiously  
32 and pursue the work diligently to completion with the contract time. If a portion of  
33 the work is to be done in stages, the Contractor shall leave the area safe and  
34 usable for the user agency and the public at the end of each stage.

35  
36 **108.02 Prosecution of Work.** Unless otherwise permitted by the Engineer,  
37 in writing, the Contractor shall not commence with physical construction unless  
38 sufficient materials and equipment are available for either continuous  
39 construction or completion of a specified portion of the work.

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41 **108.03 Preconstruction Submittals.** The awardee shall submit to the  
42 Engineer for information and review the pre-construction submittals within 30  
43 calendar days from notice to proceed. Until the items listed below are received  
44 and found acceptable by the Engineer, the Contractor shall not start physical  
45 work unless otherwise authorized to do so in writing and subject to such  
46 conditions set by the Engineer. Charging of Contract Time will not be delayed,  
47 and additional contract time will not be granted due to Contractor delay in  
48 submitting acceptable preconstruction submittals. No progress payment will be

49 made to the Contractor until the Engineer acknowledges, in writing, receipt of  
50 the following preconstruction submittals acceptable to the Engineer:

- 51  
52 (1) List of the Superintendent and other Supervisory Personnel, and  
53 their contact information.
- 54  
55 (2) Name of person(s) authorized to sign for the Contractor.
- 56  
57 (3) Work Schedule including hours of operation.
- 58  
59 (4) Initial Progress Schedule (See Subsection 108.06 – Progress  
60 Schedule).
- 61  
62 (5) Water Pollution and Siltation Control Submittals, including Site-  
63 Specific Best Management Practice Plan.
- 64  
65 (6) Solid Waste Disposal form.
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67 (7) Tax Rates.
- 68  
69 (8) Insurance Rates.
- 70  
71 (9) Certificate of Insurance, satisfactory to the Engineer, indicating  
72 that the Contractor has in place all insurance coverage required by the  
73 contract documents.
- 74  
75 (10) Schedule of agreed prices.
- 76  
77 (11) List of suppliers.
- 78  
79 (12) Traffic Control Plan, if applicable.

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81 **108.04 Character and Proficiency of Workers.** The Contractor shall at all  
82 times provide adequate supervision and sufficient labor and equipment for  
83 prosecuting the work to full completion in the manner and within the time required  
84 by the contract. The superintendent and all other representatives of the  
85 Contractor shall act in a civil and honest manner in all dealings with the Engineer,  
86 all other State officials and representatives, and the public, in connection with  
87 the work.

88  
89 All workers shall possess the proper license, certification, job  
90 classification, skill, training, and experience necessary to properly perform the  
91 work assigned to them.

92  
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

96 the Contractor and will not work again without the written permission of the  
97 Engineer.

98  
99 **108.05 Contract Time.**

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101 **(A) Calculation of Contract Time.** When the contract time is on a  
102 working day basis, the total contract time allowed for the performance of  
103 the work will be the number of working days shown in the contract plus  
104 any additional working days authorized in writing as provided hereinafter.  
105 The count of elapsed working days to be charged against contract time,  
106 will begin from the Start Work Date and will continue consecutively to the  
107 date of Substantial Completion. When multiple shifts are used to  
108 perform the work, the State will not consider the hours worked over the  
109 normal eight working hours per day or night as an additional working day.  
110

111 When the contract is on a calendar day basis, the total contract time  
112 allowed for the performance of the work will be the number of days shown  
113 in the contract plus any additional days authorized in writing as provided  
114 hereinafter. The count of elapsed days to be charged against contract  
115 time will begin from the Start Work Date and will continue consecutively to  
116 the date of Substantial Completion. The Engineer will exclude days  
117 elapsing between the orders of the Engineer to suspend work and resume  
118 work for suspensions not the fault of the Contractor.  
119

120 **(B) Modifications of Contract Time.** Whenever the Contractor  
121 believes that an extension of contract time is justified, the Contractor shall  
122 serve written notice on the Engineer not more than five working days after  
123 the occurrence of the event that causes a delay or justifies a contract time  
124 extension. Contract time may be adjusted for the following reasons or  
125 events, but only if and to the extent the critical path has been affected:  
126

127 **(1) Changes in the Work, Additional Work, and Delays**  
128 **Caused by the State.** If the Contractor believes that an  
129 extension of time is justified on account of any act or omission by  
130 the State, and is not adequately provided for in a field order or  
131 change order, it must request the additional time as provided  
132 above. At the request of the Engineer, the Contractor must show  
133 how the critical path will be affected and must also support the time  
134 extension request with schedules, as well as statements from its  
135 subcontractors, suppliers, or manufacturers, as necessary.  
136 Claims for compensation for any altered or additional work will be  
137 determined pursuant to Subsection 104.02 – Changes.  
138

139 Additional time to perform the extra work will be added to the  
140 time allowed in the contract without regard to the date the change  
141 directive was issued, even if the contract completion date has  
142 passed. A change requiring time issued after contract time has

143 expired will not constitute an excusal or waiver of pre-existing  
144 Contractor delay.

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

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

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

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

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

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

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

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

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

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

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

1. State specifically all reasons for the delay. Explain in a detailed chronology the effect of the delay on the critical path.
2. Submit copies of purchase order(s), factory invoice(s), bill(s) of lading, shipping manifest(s), delivery tag(s), and any other documents to support the time extension request.
3. Cite the start and end date of the delay and the time extension requested.

**(5) Delays for Suspension of Work.** When the performance of the work is totally suspended for one or more days (calendar or working days, as appropriate) by order of the Engineer in accordance with Subsections 108.10(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 working days before the partial suspension will affect the critical operation(s) in

239 progress. The Contractor must show how the critical path was  
240 increased based on the status of the work and must also support its  
241 claim if requested, with statements from its subcontractors. A  
242 suspension of work will not constitute a waiver of pre-existing  
243 Contractor delay.  
244

245 **(6) Contractor Caused Delays.** No time extension will be  
246 granted under the following circumstances:  
247

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

251  
252 **(b)** Delays within the Contractor's control in arrival of  
253 materials and equipment caused by the Contractor,  
254 subcontractor, supplier, or any combination thereof, in  
255 ordering, fabricating, and delivery.  
256

257 **(c)** Delays requested for changes which do not affect the  
258 critical path.  
259

260 **(d)** Delays caused by the failure of the Contractor to  
261 make submittals in a timely manner for review and  
262 acceptance by the Engineer, such as but not limited to shop  
263 drawings, descriptive sheets, material samples, and color  
264 samples except as covered in Subsection 108.05(B)(3) and  
265 108.05(B)(4).  
266

267 **(e)** Delays caused by the failure to submit sufficient  
268 information and data in a timely manner in the proper form in  
269 order to obtain necessary permits related to the work.  
270

271 **(f)** Failure to follow the procedure within the time allowed  
272 by contract to request a time extension.  
273

274 **(g)** Failure of the Contractor to provide evidence sufficient  
275 to support the time extension request.  
276

277 **(7) Reduction in Time.** If the State deletes or modifies any  
278 portion of the work, an appropriate reduction of contract time may  
279 be made in accordance with Subsection 104.02 - Changes.  
280

## 281 **108.06 Progress Schedules.**

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283 **(A) Forms of Schedule.** All schedules shall be submitted using the  
284 specific computer program designated in the bid documents. If no such  
285 scheduling software program is designated, then all schedules shall be

286 submitted using the latest version of Microsoft Project by Microsoft or  
287 approved equivalent software program.

288

289 Schedule submittals shall be as follows:

290

291 **(1) For Contracts \$2,000,000 or less or For Contract Time**  
292 **100 Working Days or 140 Calendar Days or Less.** For  
293 contracts of \$2,000,000 or less or for contract time of 100 working  
294 days or 140 calendar days or less, the progress schedule will be a  
295 Time Scaled Logic Diagram (TSLD). The Contractor shall submit  
296 a TSLD submittal package meeting the following requirements and  
297 having these essential and distinctive elements:

298

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  
302 chronological order in which the Contractor proposes to work  
303 that feature or work and its location on the project. The  
304 schedule shall account for normal inclement weather,  
305 unusual soil or other conditions that may influence the  
306 progress of the work, schedules, and coordination required  
307 by any utility, off or on site fabrications, and other pertinent  
308 factors that relate to 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  
315 events 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  
339 minor shall be used as well as a separator line between  
340 groups. The 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
- 345 (l) Have columns with the appropriate data in them for  
346 activity ID, description, original duration, remaining duration,  
347 early start, early finish, total float, percent complete,  
348 resources. The resource column shall list who is  
349 responsible for the work to be done in the activity. These  
350 columns shall be to the left of the bar chart.  
351
- 352 **(2) For Contracts Which Have A Contract Amount More**  
353 **Than \$2,000,000 Or Having A Contract Time Of More Than 100**  
354 **Working Days Or 140 Calendar Days.** For contracts which  
355 have a contract amount more than \$2,000,000 or contract time of  
356 more than 100 working days or 140 calendar days, the Contractor  
357 shall submit a Timed-Scaled Logic Diagram (TSLD) meeting the  
358 following requirements and having these essential and distinctive  
359 elements:  
360
- 361 (a) The information and requirements listed in Subsection  
362 108.06(A)(1) – For Contracts \$2,000 or Less or For Contract  
363 Time 100 Working Days or 140 Calendar Days or Less.  
364
- 365 (b) Additional reports and graphics available from the  
366 software as requested by the Engineer.  
367
- 368 (c) Sufficient detail to allow at least weekly monitoring of  
369 the Contractor and subcontractor's operations.  
370
- 371 (d) The time scaled schematic shall be on a calendar or  
372 working days basis. What will be used shall be determined  
373 by how the contract keeps track of time. It will be the  
374 same. Plot the critical calendar dates anticipated.  
375
- 376 (e) Breakdown of activity, such as forming, placing  
377 reinforcing steel, concrete pouring and curing, and stripping  
378 in concrete construction. Indicate location of work to be  
379 done in such detail that it would be easily determined where  
380 work would be occurring within approximately 200 feet.

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

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

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

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

j) Incorporate all physical access and availability restraints.

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

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

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

- 430
- 431 (1) Four sets of the TSLD schedule.
- 432
- 433 (2) All the software files and data to re-create the TSLD in a  
434 computerized software format as specified by the Engineer.
- 435
- 436 (3) A listing of equipment that is anticipated to be used on the  
437 project. Including the type, size, make, year of manufacture,  
438 and all information necessary to identify the equipment in the  
439 Rental Rate Blue Book for Construction Equipment.
- 440
- 441 (4) An anticipated manpower requirement graph plotting  
442 contract time and total manpower requirement. This may be  
443 superimposed over the payment graph.
- 444
- 445 (5) A Method Statement that is a detailed narrative describing  
446 the work to be done and the method by which the work shall be  
447 accomplished for each major activity. A major activity is an  
448 activity that:
- 449
- 450 (a) Has a duration longer than five days.
- 451
- 452 (b) Is a milestone activity.
- 453
- 454 (c) Is a contract item that exceeds \$10,000 on the  
455 contract cost proposal.
- 456
- 457 (d) Is a critical path activity.
- 458
- 459 (e) Is an activity designated as such by the Engineer.

460

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

- 463
- 464 (a) Quantity, type, make, and model of equipment.
- 465
- 466 (b) The manpower to do the work, specifying worker  
467 classification.
- 468
- 469 (c) The production rate per eight hour day, or the working  
470 hours established by the contract documents needed to  
471 meet the time indicated on the schedule. If the production  
472 rate is not for eight hours, the number of working hours shall  
473 be indicated.
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**(6)** Two sets of color time-scaled project evaluation and review technique charts (“PERT”) using the activity box template of Logic – Early Start or such other template designated by the Engineer.

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

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

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

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

522 **(H) Accelerated Schedule; Early Completion.** If the Contractor  
523 submits an accelerated schedule (shorter than the contract time), the  
524 Engineer's review and acceptance of an accelerated schedule does not  
525 constitute an agreement or obligation by the State to modify the contract  
526 time or completion date. The Contractor is solely responsible for and  
527 shall accept all risks and any delays, other than those that can be directly  
528 and solely attributable to the State, that may occur during the work, until  
529 the contract completion date. The contract time or completion date is  
530 established for the benefit of the State and cannot be changed without an  
531 appropriate change order or Substantial Completion granted by the State.  
532 The State may accept the work before the completion date is established,  
533 but is not obligated to do so.  
534

535 If the TSLD indicates an early completion of the project, the  
536 Contractor shall, upon submittal of the schedule, cooperate with the  
537 Engineer in explaining how it will be achieved. In addition, the  
538 Contractor shall submit the above explanation in writing which shall  
539 include the State's part, if any, in achieving the early completion date.  
540 Early completion of the project shall not rely on changes to the Contract  
541 Documents unless approved by the Engineer.  
542

543 **(I) Contractor Responsibilities.** The Contractor shall promptly  
544 respond to any inquiries from the Engineer regarding any schedule  
545 submission. The Contractor shall adjust the schedule to address  
546 directives from the Engineer and shall resubmit the TSLD package to the  
547 Engineer until the Engineer finds it acceptable.  
548

549 The Contractor shall perform the work in accordance with the  
550 submitted TSLD. The Engineer may require the Contractor to provide  
551 additional work forces and equipment to bring the progress of the work  
552 into conformance with the TSLD at no increase in contract price or  
553 contract time whenever the Engineer determines that the progress of the  
554 work does not insure completion within the specified contract time.  
555

556 **108.07 Weekly Meeting.** In addition to the bi-weekly schedule meetings,  
557 the Contractor shall be available to meet once a week with the Engineer at the  
558 time and place as determined by the Engineer to discuss the work and its  
559 progress including but not limited to, the progress of the project, potential  
560 problems, coordination of work, submittals, erosion control reports, etc. The  
561 Contractor's personnel attending shall have the authority to make decisions and  
562 answer questions.  
563

564 The Contractor shall bring to weekly meetings a detailed work schedule  
565 showing the next three weeks' work. Number of copies of the detailed work  
566 schedule to be submitted will be determined by the Engineer. The three-week  
567 schedule is in addition to the TSLD and shall in no way be considered as a  
568 substitute for the TSLD or vice versa. The three-week schedule shall show:  
569

570 (a) All construction events, traffic control and BMP related activities in  
571 such detail that the Engineer will be able to determine at what location and  
572 type of work will be done for any day for the next three weeks. This is  
573 for the State to use to plan its manpower requirements for that time period.

574  
575 (b) The duration of all events and delays.

576  
577 (c) The critical path clearly marked in red or marked in a manner that  
578 makes it clearly distinguishable from other paths and is acceptable to the  
579 Engineer.

580  
581 (d) Critical submittals and requests for information (RFI's).

582  
583 (e) The project title, project number, date created, period the schedule  
584 covers, Contractor's name and creator of the schedule on each page.

585  
586 Two days prior to each weekly meeting, the Contractor shall  
587 submit a list of outstanding submittals, RFIs and issues that require  
588 discussion.

589  
590 **108.08 Liquidated Damages for Failure to Complete the Work or Portions**  
591 **of the Work on Time.** The actual amount of damages resulting from the  
592 Contractor's failure to complete the contract in a timely manner is difficult to  
593 accurately determine. Therefore the amount of such damages shall be  
594 liquidated damages as set forth herein and in the special provisions. The State  
595 may, at its discretion, deduct the amount from monies due or that may become  
596 due under the contract.

597  
598 When the Contractor fails to reach substantial completion of the work for  
599 which liquidated damages are specified, within the time or times fixed in the  
600 contract or any extension thereof, in addition to all other remedies for breach  
601 that may be available to the State, the Contractor shall pay liquidated damages  
602 to the State, in the amount of \$1,000 per working day.

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604  
605 (A) **Liquidated Damages Upon Termination.** If the State  
606 terminates on account of Contractor's default, liquidated damages may be  
607 charged against the defaulting Contractor and its surety until final  
608 completion of work.

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

613  
614 When the Contractor fails to complete the work on such punchlist  
615 within the contract time or any extension thereof, the Contractor shall pay  
616 liquidated damages to the State of 20 percent of the amount of liquidated  
617 damages established for failure to substantially complete the work within

618 contract time. Liquidated damages shall not be assessed for the period  
619 between:

620

621 (1) Notice from the Contractor that the project is substantially  
622 complete and the time the punchlist is delivered to the Contractor.

623

624 (2) The date of the completion of punchlist as determined by the  
625 Engineer and the date of the successful final inspection, and

626

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

630

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

637

638 **108.09 Rental Fees for Unauthorized Lane Closure or Occupancy.** In  
639 addition to all other remedies available to the State for Contractor's breach of the  
640 terms of the contract, the Engineer will assess the rental fees in the amount of  
641 \$1,500 (for Highways on Oahu) for every one-to fifteen-minute increment for  
642 each roadway lane closed to public use or occupied beyond the time periods  
643 authorized in the contract or by the Engineer. The maximum amount assessed  
644 per day shall be \$15,000. The Engineer may assess liquidated damages for  
645 failure of the Contractor, for any reason, to maintain open lanes to the public in  
646 the amount of \$2,500 (for Freeways on Oahu) for every one-to-fifteen-minute  
647 increment for each lane not open to the public. For Freeways, the maximum  
648 amount assessed per day shall be \$25,000. The State may, at its discretion,  
649 deduct the amount from monies due or that may become due under the contract.  
650 The rental fee may be waived in whole or part if the Engineer determines that the  
651 unauthorized period of lane closure or occupancy was due to factors beyond the  
652 control of the Contractor. Equipment breakdown is not a cause to waive  
653 liquidated damages.

654

655 **108.10 Suspension of Work.**

656

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

661

662 (1) Weather or soil conditions considered unsuitable for  
663 prosecution of the work.

664

- 665 (2) Whenever a redesign that may affect the work is deemed  
666 necessary by the Engineer.  
667  
668 (3) Unacceptable noise or dust arising from the construction  
669 even if it does not violate any law or regulation.  
670  
671 (4) Failure on the part of the Contractor to:  
672  
673 (a) Correct conditions unsafe for the general public or for  
674 the workers.  
675  
676 (b) Carry out orders given by the Engineer.  
677  
678 (c) Perform the work in strict compliance with the  
679 provisions of the contract.  
680  
681 (d) Provide adequate supervision on the jobsite.  
682  
683 (5) The convenience of the State.  
684

685 **(B) Partial and Total Suspension.** Suspension of work on some but  
686 not all items of work shall be considered a "partial suspension".  
687 Suspension of work on all items shall be considered "total suspension".  
688 The period of suspension shall be computed from the date set out in the  
689 written order for work to cease until the date of the order for work to  
690 resume.  
691

692 **(C) Reimbursement to Contractor.** In the event that the Contractor  
693 is ordered by the Engineer in writing as provided herein to suspend all  
694 work under the contract for the reasons specified in Subsections  
695 108.10(A)(2), 108.10(A)(3), or 108.10(A)(5) of the "Suspension of Work"  
696 paragraph, the Contractor may be reimbursed for actual direct costs  
697 incurred on work at the jobsite, as authorized in writing by the Engineer,  
698 including costs expended for the protection of the work. An allowance of 5  
699 percent for indirect categories of delay costs will be paid on any  
700 reimbursed direct costs, including extended branch and home-office  
701 overhead and delay impact costs. No allowance will be made for  
702 anticipated profits. Payment for equipment which is ordered to standby  
703 during such suspension of work shall be made as described in Subsection  
704 109.06(H) - Idle and Standby Equipment.  
705

706 **(D) Cost Adjustment.** If the performance of all or part of the work is  
707 suspended for reasons beyond the control of the Contractor except an  
708 adjustment shall be made for any increase in cost of performance of this  
709 contract (excluding profit) necessarily caused by such suspension, and  
710 the contract modified in writing accordingly.  
711

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

714                    (1)    For weather related conditions.

715                    (2)    To the extent that performance would have been so  
716 suspended, delayed, or interrupted by any other cause, including  
717 the fault or negligence of the Contractor.  
718

719                    (3)    Or, for which an adjustment is provided for or excluded  
720 under any other provision of this Contract.  
721

722                    **(E)    Claims for Adjustment.**    Any adjustment in contract price made  
723 shall be determined in accordance with Subsections 104.02 – Changes  
724 and 104.06 – Methods of Price Adjustment.  
725

726                    Any claims for such compensation shall be filed in writing with the  
727 Engineer within 30 days after the date of the order to resume work or the  
728 claim will not be considered.                    The claim shall conform to the  
729 requirements of Subsection 107.15(D) – Making of a Claim.                    The  
730 Engineer will take the claim under consideration, may make such  
731 investigations as are deemed necessary and will be the sole judge as to  
732 the equitability of the claim.                    The Engineer’s decision will be final.  
733

734                    **(F)    No Adjustment.**                    No provision of this clause shall entitle the  
735 Contractor to any adjustments for delays due to failure of its surety, the  
736 cancellation or expiration of any insurance coverage required by the  
737 contract documents, for suspensions made at the request of the  
738 Contractor, for any delay required under the contract, for suspensions,  
739 either partial or whole, made by the Engineer under Subsection  
740 108.10(A)(4) of the “Suspension of work” paragraph.  
741

742  
743  
744 **108.11    Termination of Contract for Cause.**  
745

746                    **(A)    Default.**                    If the Contractor refuses or fails to perform the work, or  
747 any separable part thereof, with such diligence as will assure its  
748 completion within the time specified in this contract, or any extension  
749 thereof, or commits any other material breach of this contract, and further  
750 fails within seven days after receipt of written notice from the Engineer to  
751 commence and continue correction of the refusal or failure with diligence  
752 and promptness, the Engineer may, by written notice to the Contractor,  
753 declare the Contractor in breach and terminate the Contractor’s right to  
754 proceed with the work or the part of the work as to which there has been  
755 delay or other breach of contract.                    In such event, the State may take  
756 over the work, perform the same to completion, by contract or otherwise,  
757 and may take possession of, and utilize in completing the work, the  
758 materials, appliances, and plants as may be on the site of the work and  
759 necessary therefore.                    Whether or not the Contractor’s right to proceed

760 with the work is terminated, the Contractor and the Contractor's sureties  
761 shall be liable for any damage to the State resulting from the Contractor's  
762 refusal or failure to complete the work within the specified time.

763  
764 **(B) Additional Rights and Remedies.** The rights and remedies of  
765 the State provided in this contract are in addition to any other rights and  
766 remedies provided by law.

767  
768 **(C) Costs and Charges.** All costs and charges incurred by the  
769 State, together with the cost of completing the work under contract, will  
770 be deducted from any monies due or which would or might have become  
771 due to the Contractor had it been allowed to complete the work under the  
772 contract. If such expense exceeds the sum which would have been  
773 payable under the contract, then the Contractor and the surety shall be  
774 liable and shall pay the State the amount of the excess.

775  
776 In case of termination, the Engineer will limit any payment to the  
777 Contractor to the part of the contract satisfactorily completed at the time of  
778 termination. Payment will not be made until the work has satisfactorily  
779 been completed and all required documents, including the tax clearance  
780 required by Subsection 109.11 – Final Payment are submitted by the  
781 Contractor. Termination shall not relieve the Contractor or Surety from  
782 liability for liquidated damages.

783  
784 **(D) Erroneous Termination for Cause.** If, after notice of  
785 termination of the Contractor's right to proceed under this section, it is  
786 determined for any reason that good cause did not exist to allow the State  
787 to terminate as provided herein, the rights and obligations of the parties  
788 shall be the same as, and the relief afforded the Contractor shall be  
789 limited to, the provisions contained in Subsection 108.12 – Termination  
790 for Convenience.

791  
792 **108.12 Termination For Convenience.**

793  
794 **(A) Terminations.** The Director may, when the interests of the State  
795 so require, terminate this contract in whole or in part, for the convenience  
796 of the State. The Director will give written notice of the termination to  
797 the Contractor specifying the part of the contract terminated and when  
798 termination becomes effective.

799  
800 **(B) Contractor's Obligations.** The Contractor shall incur no further  
801 obligations in connection with the terminated work and on the date set in  
802 the notice of termination the Contractor shall stop work to the extent  
803 specified. The Contractor shall also terminate outstanding orders and  
804 subcontracts as they relate to the terminated work. The Contractor shall  
805 settle the liabilities and claims arising out of the termination of  
806 subcontracts and orders connected with the terminated work subject to the  
807 State's approval. The Engineer may direct the Contractor to assign the

808 Contractor's right, title, and interest under terminated orders or  
809 subcontracts to the State. The Contractor must still complete the work  
810 not terminated by the notice of termination and may incur obligations as  
811 necessary to do so.

812  
813 **(C) Right to Construction and Goods.** The Engineer may require  
814 the Contractor to transfer title and to deliver to the State in the manner and  
815 to the extent directed by the Engineer, the following:

- 816  
817 (1) Any completed work.  
818  
819 (2) Any partially completed construction, goods, materials,  
820 parts, tools, dies, jigs, fixtures, drawings, information, and  
821 contract rights (hereinafter called "construction material") that the  
822 Contractor has specifically produced or specially acquired for the  
823 performance of the terminated part of this contract.  
824  
825 (3) The Contractor shall protect and preserve all property in the  
826 possession of the Contractor in which the State has an interest. If  
827 the Engineer does not elect to retain any such property, the  
828 Contractor shall use its best efforts to sell such property and  
829 construction materials for the State's account in accordance with  
830 the standards of HRS Chapter 490:2-706.

831  
832 **(D) Compensation.**

- 833  
834 (1) The Contractor shall submit a termination claim specifying  
835 the amounts due because of the termination for convenience  
836 together with cost or pricing data, submitted to the extent required  
837 by HAR Subchapter 15, Chapter 3-122. If the Contractor fails to  
838 file a termination claim within one year from the effective date of  
839 termination, the Engineer may pay the Contractor, if at all, an  
840 amount set in accordance with Subsection 108.12(D)(3).  
841  
842 (2) The Engineer and the Contractor may agree to a settlement  
843 provided the Contractor has filed a termination claim supported by  
844 cost or pricing data submitted as required and that the settlement  
845 does not exceed the total contract price plus settlement costs  
846 reduced by payments previously made by the State, the proceeds  
847 of any sales of construction, supplies, and construction materials  
848 under Subsection 108.12(C)(3), and the proportionate contract  
849 price of the work not terminated.  
850  
851 (3) Absent complete agreement, the Engineer will pay the  
852 Contractor the following amounts less any payments previously  
853 made under the contract:  
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(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.

- 903  
904           (5) Certificate of building occupancy as required.  
905  
906           (6) Certificate of Soil and Wood Treatments.  
907  
908           (7) Certificate of Water System Chlorination.  
909  
910           (8) Certificate of Elevator Inspection, Boiler and Pressure Pipe  
911 Inspection.  
912  
913           (9) Maintenance Service Contract and two copies of a list of all  
914 equipment installed.  
915  
916           (10) Current Tax clearance. The contractor will be required to  
917 submit an additional tax clearance certificate when the final  
918 payment is made.  
919  
920           (11) And any other final items and submittals required by the  
921 contract documents.  
922

923           **(C) Procedure.** When in compliance with the above requirements,  
924 the Contractor shall notify the Engineer in writing that the project has  
925 reached substantial completion and is ready for pre-final inspection.  
926

927           The Engineer will then make a preliminary determination as to  
928 whether or not the project is substantially complete and ready for pre-final  
929 inspection. The Engineer may, in writing, postpone until after the pre-  
930 final inspection the Contractor's submittal of any of the items listed in  
931 Subsection 108.13(B) – Pre-Final Inspection, herein, if in the Engineer's  
932 discretion it is in the interest of the State to do so.  
933

934           If, in the opinion of the Engineer, the project is not substantially  
935 complete, the Engineer will provide the Contractor a punchlist of specific  
936 deficiencies in writing which must be corrected or finished before the work  
937 will be ready for a pre-final inspection. The Engineer may add to or  
938 otherwise modify this punchlist from time to time. The Contractor shall  
939 take immediate action to correct the deficiencies and must repeat all steps  
940 described above including written notification that the work is ready for  
941 pre-final inspection.  
942

943           After the Engineer is satisfied that the project appears substantially  
944 complete a final inspection shall be scheduled within ten working days  
945 after receipt of the Contractor's latest letter of notification that the project is  
946 ready for final inspection.  
947

948           If, as a result of the pre-final inspection, the Engineer determines  
949 the work is not substantially complete, the Engineer will inform the  
950 Contractor in writing as to specific deficiencies which must be corrected

951 before the work will be ready for another pre-final inspection. If the  
952 Engineer finds the work is substantially complete but finds deficiencies  
953 that must be corrected before the work is ready for final inspection, the  
954 Engineer will prepare in writing and deliver to the Contractor a punchlist  
955 describing such deficiencies.  
956

957 At any time before final acceptance, the Engineer may revoke the  
958 determination of substantial completion if the Engineer finds that it was not  
959 warranted and will notify the Contractor in writing the reasons therefore  
960 together with a description of the deficiencies negating the declaration.  
961

962 When the date of substantial completion has been determined by  
963 the State, liquidated damages for the failure to complete the punchlist, if  
964 due to the State will be assessed in pursuant to Subsection 108.08(B) -  
965 Liquidated Damages for Failure to Complete the Punchlist.  
966

967 **(D) Punchlist; Clean Up and Final Inspection.** Upon receiving a  
968 punchlist after pre-final inspection, the Contractor shall promptly devote all  
969 required time, labor, equipment, materials and incidentals to correct and  
970 remedy all punchlist deficiencies. The Engineer may add to or otherwise  
971 modify this punchlist until substantial completion of the project.  
972

973 Before final inspection of the work, the Contractor shall clean all  
974 ground occupied by the Contractor in connection with the work of all  
975 rubbish, excess materials, temporary structures and equipment, shall  
976 remove all graffiti and defacement of the work and all parts of the work  
977 and the worksite must be left in a neat and presentable condition to the  
978 satisfaction of the Engineer.  
979

980 Final inspection will occur within ten working days after the  
981 Contractor notifies the Engineer in writing that all punchlist deficiencies  
982 remaining after the pre-final inspection have been completed and the  
983 Engineer concurs. If the Engineer determines that deficiencies still  
984 remain at the final inspection, the work will not be accepted and the  
985 Engineer will notify the Contractor, in writing, of the deficiencies which  
986 shall be corrected and the steps above repeated.  
987

988 If the Contractor fails to correct the deficiencies and complete the  
989 work by the established or agreed date, the State may correct the  
990 deficiencies by whatever method it deems appropriate and deduct the cost  
991 from any payments due the Contractor.  
992

993 **108.14 Substantial Completion and Final Acceptance.**  
994

995 **(A) Substantial Completion.** When the Engineer finds that the  
996 Contractor has satisfactorily completed all work for the project in  
997 compliance with the contract, with the exception of the planting period and  
998 the plant establishment period, the Engineer will notify the Contractor, in

999 writing, of the project's substantial completion, effective as of the date of  
1000 the final inspection. The substantial completion date shall determine end  
1001 of contract time and relieve contractor of any additional accumulation of  
1002 liquidated damages for failure to complete the punchlist.

1003  
1004 **(B) Final Acceptance.** When the Engineer finds that the Contractor  
1005 has satisfactorily completed all contract work in compliance with the  
1006 contract including all plant establishment requirements, and all the  
1007 materials have been accepted by the State, the Engineer will issue a Final  
1008 Acceptance Letter. The Final Acceptance date shall determine the  
1009 commencement of all guaranty periods subject to Subsection 108.16 –  
1010 Contractor's Responsibility for Work; Risk of Loss or Damage.

1011  
1012 **108.15 Use of Structure or Improvement.** The State has the right to use  
1013 the structure, equipment, improvement, or any part thereof, at any time after it  
1014 is considered by the Engineer as available. In the event that the structure,  
1015 equipment or any part thereof is used by the State before final acceptance, the  
1016 Contractor is not relieved of its responsibility to protect and preserve all the work  
1017 until final acceptance.

1018  
1019 **108.16 Contractor's Responsibility for Work; Risk of Loss or Damage.**  
1020 Until the written notice of final acceptance has been received, the Contractor  
1021 shall take every precaution against loss or damage to any part of the work by the  
1022 action of the elements or from any other cause whatsoever, whether arising from  
1023 the performance or from the non-performance of the work. The Contractor  
1024 shall rebuild, repair, restore and make good all loss or damage to any portion of  
1025 the work resulting from any cause before its receipt of the written notice of final  
1026 acceptance and shall bear the risk and expense thereof.

1027  
1028 The risk of loss or damage to the work from any hazard or occurrence that  
1029 may or may not be covered by a builder's risk policy is that of the Contractor and  
1030 Surety, unless such risk of loss is placed elsewhere by express language in the  
1031 contract documents.

1032  
1033 **108.17 Guarantee of Work.**

1034  
1035 **(1)** Regardless of, and in addition to, any manufacturers' warranties,  
1036 all work and equipment shall be guaranteed by the Contractor against  
1037 defects in materials, equipment or workmanship for one year from the  
1038 date of final acceptance or as otherwise specified in the contract  
1039 documents.

1040  
1041 **(2)** When the Engineer determines that repairs or replacements of any  
1042 guaranteed work and equipment is necessary due to materials,  
1043 equipment, or workmanship which are inferior, defective, or not in  
1044 accordance with the terms of the contract, the Contractor shall, at no  
1045 increase in contract price or contract time, and within five working days of  
1046 receipt of written notice from the State, commence to all of the following:

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(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.

(2) Any extension of time.

(3) Any possession taken by the Engineer.

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

**108.19 Final Settlement of Contract.**

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

- (1) All written guarantees required by the contract.
- (2) Complete and certified weekly payrolls for the Contractor and its subcontractor's.
- (3) Certificate of plumbing and electrical inspection.
- (4) Certificate of building occupancy.
- (5) Certificate for soil treatment and wood treatment.
- (6) Certificate of water system chlorination.
- (7) Certificate of elevator inspection, boiler and pressure pipe installation.
- (8) Tax clearance.
- (9) All other documents required by the Contract or by law.

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

**END OF SECTION 108**