

1 Amend **Section 108 – PROSECUTION AND PROGRESS** to read as follows:
2

3 **“SECTION 108 – PROSECUTION AND PROGRESS**
4

5
6 **108.01 Notice to Proceed (NTP).** A Notice To Proceed will be issued to the
7 Contractor not more 30 calendar days after the contract certification date. The
8 Engineer may suspend the contract before issuing the Notice To Proceed, in
9 which case the Contractor’s remedies are exclusively those set forth in Subsection
10 108.10 – Suspension of Work.
11

12 The Contractor shall be allowed up to 14 calendar days after the Notice to
13 Proceed to begin physical work. The Start Work Date will be established when
14 this period ends or on the actual day that physical work begins, whichever is first.
15 Charging of Contract Time will begin on the Start Work Date. The Contractor shall
16 notify the Engineer, in writing, at least five working days before beginning physical
17 work.
18

19 In the event that the Contractor fails to start physical work within the time
20 specified, the Engineer may terminate the contract in accordance with Subsection
21 108.11 – Termination of Contract for Cause.
22

23 During the period between the Notice to Proceed and the Start Work Date
24 the Contractor should adjust work forces, equipment, schedules, and procure
25 materials and required permits, prior to beginning physical work.
26

27 Any physical work done prior to the Start Work Date will be considered
28 unauthorized work. If the Engineer does not direct that the unauthorized work be
29 removed, it shall be paid for after the Start Work Date and only if it is acceptable.
30

31 In the event that the Engineer establishes, in writing, a Start Work Date that
32 is beyond fourteen (14) calendar days from the Notice to Proceed date, the
33 Contractor may submit a claim in accordance with, Subsection 107.15 – Disputes
34 and Claims for increased labor and material costs which are directly attributable to
35 the delay beyond the first fourteen (14) calendar days after the Notice to Proceed
36 date.
37

38 The Contractor shall notify the Engineer at least 24 hours before restarting
39 physical work after a suspension of work pursuant to Subsection 108.10 –
40 Suspension of Work.
41

42 Once physical work has begun, the Contractor shall work expeditiously and
43 pursue the work diligently to completion with the contract time. If a portion of the
44 work is to be done in stages, the Contractor shall leave the area safe and usable
45 for the user agency and the public at the end of each stage.
46

47 **108.02 Prosecution of Work.** Unless otherwise permitted by the Engineer, in
48 writing, the Contractor shall not commence with physical construction unless
49 sufficient materials and equipment are available for either continuous construction
50 or completion of a specified portion of the work.
51

52 **108.03 Preconstruction Submittals.** The awardee shall submit to the
53 Engineer for information and review the pre-construction submittals within 21
54 calendar days from award. Until the items listed below are received and found
55 acceptable by the Engineer, the Contractor shall not start physical work unless
56 otherwise authorized to do so in writing and subject to such conditions set by the
57 Engineer. Charging of Contract Time will not be delayed, and additional contract
58 time will not be granted due to Contractor delay in submitting acceptable
59 preconstruction submittals. No progress payment will be made to the Contractor
60 until the Engineer acknowledges, in writing, receipt of the following preconstruction
61 submittals acceptable to the Engineer:
62

- 63 (1) List of the Superintendent and other Supervisory Personnel, and
64 their contact information.
- 65
- 66 (2) Name of person(s) authorized to sign for the Contractor.
67
- 68 (3) Work Schedule including hours of operation.
69
- 70 (4) Initial Progress Schedule (See Subsection 108.06 – Progress
71 Schedule).
72
- 73 (5) Water Pollution and Siltation Control Submittals, including Site-
74 Specific Best Management Practice Plan.
75
- 76 (6) Solid Waste Disposal form.
77
- 78 (7) Tax Rates.
79
- 80 (8) Insurance Rates.
81
- 82 (9) Certificate of Insurance, satisfactory to the Engineer, indicating that
83 the Contractor has in place all insurance coverage required by the contract
84 documents.
85
- 86 (10) Schedule of agreed prices.
87
- 88 (11) List of suppliers.
89
- 90 (12) Traffic Control Plan, if applicable.

91 **108.04 Character and Proficiency of Workers.** The Contractor shall at all
92 times provide adequate supervision and sufficient labor and equipment for
93 prosecuting the work to full completion in the manner and within the time required
94 by the contract. The superintendent and all other representatives of the
95 Contractor shall act in a civil and honest manner in all dealings with the Engineer,
96 all other State officials and representatives, and the public, in connection with the
97 work.

98
99 All workers shall possess the proper license, certification, job classification,
100 skill, training, and experience necessary to properly perform the work assigned to
101 them.

102
103 The Engineer may direct the removal of any worker(s) who does not carry
104 out the assigned work in a proper and skillful manner or who is disrespectful,
105 intemperate, violent, or disorderly. The worker shall be removed forthwith by the
106 Contractor and will not work again without the written permission of the Engineer.

107
108 **108.05 Contract Time.**

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

119
120 When the contract is on a calendar day basis, the total contract time
121 allowed for the performance of the work will be the number of days shown
122 in the contract plus any additional days authorized in writing as provided
123 hereinafter. The count of elapsed days to be charged against contract time
124 will begin from the Start Work Date and will continue consecutively to the
125 date of Substantial Completion. The Engineer will exclude days elapsing
126 between the orders of the Engineer to suspend work and resume work for
127 suspensions not the fault of the Contractor.

128
129 **(B) Modifications of Contract Time.** Whenever the Contractor
130 believes that an extension of contract time is justified, the Contractor shall
131 serve written notice on the Engineer not more than five working days after
132 the occurrence of the event that causes a delay or justifies a contract time
133 extension. Contract time may be adjusted for the following reasons or
134 events, but only if and to the extent the critical path has been affected:
135

136 **(1) Changes in the Work, Additional Work, and Delays**
 137 **Caused by the State.** If the Contractor believes that an extension of
 138 time is justified on account of any act or omission by the State, and is
 139 not adequately provided for in a field order or change order, it must
 140 request the additional time as provided above. At the request of the
 141 Engineer, the Contractor must show how the critical path will be
 142 affected and must also support the time extension request with
 143 schedules, as well as statements from its subcontractors, suppliers,
 144 or manufacturers, as necessary. Claims for compensation for any
 145 altered or additional work will be determined pursuant to Subsection
 146 104.02 – Changes.

147
 148 Additional time to perform the extra work will be added to the
 149 time allowed in the contract without regard to the date the change
 150 directive was issued, even if the contract completion date has
 151 passed. A change requiring time issued after contract time has
 152 expired will not constitute an excusal or waiver of pre-existing
 153 Contractor delay.

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

168
 169 **(3) Delays Beyond Contractor's Control.** For delays caused by
 170 acts of God, a public enemy, fire, inclement weather days or adverse
 171 conditions resulting therefrom, earthquakes, floods, epidemics,
 172 quarantine restrictions, labor disputes impacting the Contractor or
 173 the State, freight embargoes and other reasons beyond the
 174 Contractor's control, the Contractor may be granted an extension of
 175 time provided that:

176
 177 **(a)** In the written notice of delay to the Engineer, the
 178 Contractor describes possible effects on the completion date
 179 of the contract. The description of delays shall:
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1. State specifically the reason or reasons for the delay and fully explain in a detailed chronology how the delay affects the critical path.

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

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

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

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

(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.

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

230
231 3. Cite the start and end date of the delay and the
232 time extension requested.

233
234 **(5) Delays for Suspension of Work.** When the performance of
235 the work is totally suspended for one or more days (calendar or
236 working days, as appropriate) by order of the Engineer in
237 accordance with Subsections 108.10(A)(1), 108.10(A)(2), or
238 108.10(A)(5) the number of days from the effective date of the
239 Engineer's order to suspend operations to the effective date of the
240 Engineer's order to resume operations shall not be counted as
241 contract time and the contract completion date will be adjusted.
242 During periods of partial suspensions of the work, the Contractor will
243 be granted a time extension only if the partial suspension affects the
244 critical path. If the Contractor believes that an extension of time is
245 justified for a partial suspension of work, it must request the
246 extension in writing at least five working days before the partial
247 suspension will affect the critical operation(s) in progress. The
248 Contractor must show how the critical path was increased based on
249 the status of the work and must also support its claim if requested,
250 with statements from its subcontractors. A suspension of work will
251 not constitute a waiver of pre-existing Contractor delay.

252
253 **(6) Contractor Caused Delays.** No time extension will be
254 granted under the following circumstances:

255
256 **(a)** Delays within the Contractor's control in performing the
257 work caused by the Contractor, subcontractor, supplier, or any
258 combination thereof.

259
260 **(b)** Delays within the Contractor's control in arrival of
261 materials and equipment caused by the Contractor,
262 subcontractor, supplier, or any combination thereof, in
263 ordering, fabricating, and delivery.

264
265 **(c)** Delays requested for changes which do not affect the
266 critical path.

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

274
 275 (e) Delays caused by the failure to submit sufficient
 276 information and data in a timely manner in the proper form in
 277 order to obtain necessary permits related to the work.

278
 279 (f) Failure to follow the procedure within the time allowed
 280 by contract to request a time extension.

281
 282 (g) Failure of the Contractor to provide evidence sufficient
 283 to support the time extension request.

284
 285 (7) **Reduction in Time.** If the State deletes or modifies any
 286 portion of the work, an appropriate reduction of contract time may be
 287 made in accordance with Subsection 104.02 - Changes.

288
 289 **108.06 Progress Schedules.**

290
 291 (A) **Forms of Schedule.** All schedules shall be submitted using the
 292 specific computer program designated in the bid documents. If no such
 293 scheduling software program is designated, then all schedules shall be
 294 submitted using the latest version of Microsoft Project by Microsoft or
 295 approved equivalent software program.

296
 297 Schedule submittals shall be as follows:

298
 299 (1) **For Contracts \$2,000,000 or less or For Contract Time 100**
 300 **Working Days or 140 Calendar Days or Less.** For contracts of
 301 \$2,000,000 or less or for contract time of 100 working days or 140
 302 calendar days or less, the progress schedule will be a Time Scaled
 303 Logic Diagram (TSLD). The Contractor shall submit a TSLD
 304 submittal package meeting the following requirements and having
 305 these essential and distinctive elements:

306
 307 (a) The major features of work, such as but not limited to
 308 BMP installation, grubbing, roadway excavation, structure
 309 excavation, structure construction, shown in the chronological
 310 order in which the Contractor proposes to work that feature or
 311 work and its location on the project. The schedule shall
 312 account for normal inclement weather, unusual soil or other

- 313 conditions that may influence the progress of the work,
314 schedules, and coordination required by any utility, off or on
315 site fabrications, and other pertinent factors that relate to
316 progress;
- 317
- 318 **(b)** All features listed or not listed in the contract
319 documents that the Contractor considers a controlling factor
320 for the timely completion of the contract work.
- 321
- 322 **(c)** The time span and sequence of the activities or events
323 for each feature, and its interrelationship and
324 interdependencies in time and logic to other features in order
325 to complete the project.
- 326
- 327 **(d)** The total anticipated time necessary to complete work
328 required by the contract.
- 329
- 330 **(e)** A chronological listing of critical intermediate dates or
331 time periods for features or milestones or phases that can
332 affect timely completion of the project.
- 333
- 334 **(f)** Major activities related to the location on the project.
- 335
- 336 **(g)** Non-construction activities, such as submittal and
337 acceptance periods for shop drawings and material,
338 procurement, testing, fabrication, mobilization, and
339 demobilization or order dates of long lead material.
- 340
- 341 **(h)** Set schedule logic for out of sequence activities to
342 retain logic. In addition, open ends shall be non-critical.
- 343
- 344 **(i)** Show target bars for all activities.
- 345
- 346 **(j)** Vertical and horizontal sight lines both major and minor
347 shall be used as well as a separator line between groups.
348 The Engineer will determine frequency and style.
- 349
- 350 **(k)** The file name, print date, revision number, data and
351 project title and number shall be included in the title block.
- 352
- 353 **(l)** Have columns with the appropriate data in them for
354 activity ID, description, original duration, remaining duration,
355 early start, early finish, total float, percent complete,
356 resources. The resource column shall list who is responsible
357 for the work to be done in the activity. These columns shall
358 be to the left of the bar chart.
- 359

360 **(2) For Contracts Which Have A Contract Amount More Than**
361 **\$2,000,000 Or Having A Contract Time Of More Than 100**
362 **Working Days Or 140 Calendar Days.** For contracts which have a
363 contract amount more than \$2,000,000 or contract time of more than
364 100 working days or 140 calendar days, the Contractor shall submit
365 a Timed-Scaled Logic Diagram (TSLD) meeting the following
366 requirements and having these essential and distinctive elements:
367

368 **(a)** The information and requirements listed in Subsection
369 108.06(A)(1) – For Contracts \$2,000,000 or Less or For
370 Contract Time 100 Working Days or 140 Calendar Days or
371 Less.
372

373 **(b)** Additional reports and graphics available from the
374 software as requested by the Engineer.
375

376 **(c)** Sufficient detail to allow at least weekly monitoring of
377 the Contractor and subcontractor's operations.
378

379 **(d)** The time scaled schematic shall be on a calendar or
380 working days basis. What will be used shall be determined by
381 how the contract keeps track of time. It will be the same. Plot
382 the critical calendar dates anticipated.
383

384 **(e)** Breakdown of activity, such as forming, placing
385 reinforcing steel, concrete pouring and curing, and stripping in
386 concrete construction. Indicate location of work to be done in
387 such detail that it would be easily determined where work
388 would be occurring within approximately 200 feet.
389

390 **(f)** Latest start and finish dates for critical path activities.
391

392 **(g)** Identify responsible subcontractor, supplier, and others
393 for their respective activity.
394

395 **(h)** No individual activity shall have duration of more than
396 20 calendar days unless requested and approved by the
397 Engineer.
398

399 **(i)** All activities shall have work breakdown structure
400 codes and activity codes. The activity codes shall have
401 coding that incorporates information for phase, location, who
402 is responsible for doing work and type of operation and
403 activity description.
404

405 (j) Incorporate all physical access and availability
406 restraints.

407

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

410

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

433

434 **(D) Initial Progress Schedule.** The Contractor shall submit an initial
435 progress schedule. The initial progress schedule shall consist of the
436 following:

437

- 438 (1) Four sets of the TSLD schedule.
- 439
- 440 (2) All the software files and data to re-create the TSLD in a
441 computerized software format as specified by the Engineer.
- 442
- 443 (3) A listing of equipment that is anticipated to be used on the
444 project. Including the type, size, make, year of manufacture, and all
445 information necessary to identify the equipment in the Rental Rate
446 Blue Book for Construction Equipment.
- 447
- 448 (4) An anticipated manpower requirement graph plotting contract
449 time and total manpower requirement. This may be superimposed
450 over the payment graph.

451

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

- 456
- 457 (a) Has a duration longer than five days.
- 458
- 459 (b) Is a milestone activity.
- 460
- 461 (c) Is a contract item that exceeds \$10,000 on the contract
 462 cost proposal.
- 463
- 464 (d) Is a critical path activity.
- 465
- 466 (e) Is an activity designated as such by the Engineer.
- 467

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

- 470
- 471 (a) Quantity, type, make, and model of equipment.
- 472
- 473 (b) The manpower to do the work, specifying worker
 474 classification.
- 475
- 476 (c) The production rate per eight hour day, or the working
 477 hours established by the contract documents needed to meet
 478 the time indicated on the schedule. If the production rate is
 479 not for eight hours, the number of working hours shall be
 480 indicated.

481

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

485

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

488

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

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

498 all new activities and any changes in duration or start or finish dates of any
499 activity.

500
501 The Contractor shall submit with every update, in report form
502 acceptable to the Engineer, a list of changes to the progress schedule since
503 the previous schedule submittal. The Engineer may change the frequency
504 of the submittal requirements but may not require a submittal of the
505 schedule to be more than once a week. The Engineer may decrease the
506 frequency of the submittal of the bi-weekly schedule.

507
508 The Contractor shall submit updates of the anticipated work
509 completion graph, equipment listing, manpower requirement graph or
510 method statement when requested by the Engineer. The Contractor shall
511 submit such updates within 4 calendar days from the date of the request by
512 the Engineer.

513
514 The Engineer may withhold progress payment until the Contractor is
515 in compliance with all schedule update requirements

516
517 **(F) Float.** All float appearing on a schedule is a shared commodity.
518 Float does not belong to or exist for the exclusive use or benefit of either
519 the State or the Contractor. The State or the Contractor has the opportunity
520 to use available float until it is depleted. Float has no monetary value.

521
522 **(G) Scheduled Meetings.** The Contractor shall meet on a bi-weekly
523 basis with the Engineer to review the progress schedule. The Contractor
524 shall have someone attending the meeting that can answer all questions on
525 the TSLD and other schedule related submittals.

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

108.10

539 If the TSLD indicates an early completion of the project, the
540 Contractor shall, upon submittal of the schedule, cooperate with the
541 Engineer in explaining how it will be achieved. In addition, the Contractor
542 shall submit the above explanation in writing which shall include the State's
543 part, if any, in achieving the early completion date. Early completion of the
544 project shall not rely on changes to the Contract Documents unless
545 approved by the Engineer.
546

547 **(l) Contractor Responsibilities.** The Contractor shall promptly
548 respond to any inquiries from the Engineer regarding any schedule
549 submission. The Contractor shall adjust the schedule to address directives
550 from the Engineer and shall resubmit the TSLD package to the Engineer
551 until the Engineer finds it acceptable.
552

553 The Contractor shall perform the work in accordance with the
554 submitted TSLD. The Engineer may require the Contractor to provide
555 additional work forces and equipment to bring the progress of the work into
556 conformance with the TSLD at no increase in contract price or contract time
557 whenever the Engineer determines that the progress of the work does not
558 insure completion within the specified contract time.
559

560 **108.07 Weekly Meeting.** In addition to the bi-weekly schedule meetings, the
561 Contractor shall be available to meet once a week with the Engineer at the time
562 and place as determined by the Engineer to discuss the work and its progress
563 including but not limited to, the progress of the project, potential problems,
564 coordination of work, submittals, erosion control reports, etc. The Contractor's
565 personnel attending shall have the authority to make decisions and answer
566 questions.
567

568 The Contractor shall bring to weekly meetings a detailed work schedule
569 showing the next three weeks' work. Number of copies of the detailed work
570 schedule to be submitted will be determined by the Engineer. The three-week
571 schedule is in addition to the TSLD and shall in no way be considered as a
572 substitute for the TSLD or vice versa. The three-week schedule shall show:
573

574 **(a)** All construction events, traffic control and BMP related activities in
575 such detail that the Engineer will be able to determine at what location and
576 type of work will be done for any day for the next three weeks. This is for
577 the State to use to plan its manpower requirements for that time period.
578

579 **(b)** The duration of all events and delays.
580

581 **(c)** The critical path clearly marked in red or marked in a manner that
582 makes it clearly distinguishable from other paths and is acceptable to the
583 Engineer.
584

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

586

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

589

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

592

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

600

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

606

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

611

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

615

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

622

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

625

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

628

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

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

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

650
651 **108.10 Suspension of Work.**

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

657
658 **(1)** Weather or soil conditions considered unsuitable for
659 prosecution of the work.

660
661 **(2)** Whenever a redesign that may affect the work is deemed
662 necessary by the Engineer.

663
664 **(3)** Unacceptable noise or dust arising from the construction even
665 if it does not violate any law or regulation.

666
667 **(4)** Failure on the part of the Contractor to:

668
669 **(a)** Correct conditions unsafe for the general public or for
670 the workers.

671
672 **(b)** Carry out orders given by the Engineer.

108.10

673 (c) Perform the work in strict compliance with the
674 provisions of the contract.

675
676 (d) Provide adequate supervision on the jobsite.
677 (5) The convenience of the State.
678

679 **(B) Partial and Total Suspension.** Suspension of work on some but
680 not all items of work shall be considered a “partial suspension”.
681 Suspension of work on all items shall be considered “total suspension”.
682 The period of suspension shall be computed from the date set out in the
683 written order for work to cease until the date of the order for work to
684 resume.
685

686 **(C) Reimbursement to Contractor.** In the event that the Contractor is
687 ordered by the Engineer in writing as provided herein to suspend all work
688 under the contract for the reasons specified in Subsections 108.10(A)(2),
689 108.10(A)(3), or 108.10(A)(5) of the “Suspension of Work” paragraph, the
690 Contractor may be reimbursed for actual direct costs incurred on work at
691 the jobsite, as authorized in writing by the Engineer, including costs
692 expended for the protection of the work. An allowance of 5 percent for
693 indirect categories of delay costs will be paid on any reimbursed direct
694 costs, including extended branch and home-office overhead and delay
695 impact costs. No allowance will be made for anticipated profits. Payment
696 for equipment which is ordered to standby during such suspension of work
697 shall be made as described in Subsection 109.06(H) - Idle and Standby
698 Equipment.
699

700 **(D) Cost Adjustment.** If the performance of all or part of the work is
701 suspended for reasons beyond the control of the Contractor except an
702 adjustment shall be made for any increase in cost of performance of this
703 contract (excluding profit) necessarily caused by such suspension, and the
704 contract modified in writing accordingly.
705

706 However, no adjustment to the contract price shall be made for any
707 suspension, delay, or interruption:
708

709 (1) For weather related conditions.
710

711 (2) To the extent that performance would have been so
712 suspended, delayed, or interrupted by any other cause, including the
713 fault or negligence of the Contractor.
714

715 (3) Or, for which an adjustment is provided for or excluded under
716 any other provision of this Contract.
717

718 **(E) Claims for Adjustment.** Any adjustment in contract price made
 719 shall be determined in accordance with Subsections 104.02 – Changes and
 720 104.06 – Methods of Price Adjustment.
 721

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

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

738 **108.11 Termination of Contract for Cause.**
 739

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

758 **(B) Additional Rights and Remedies.** The rights and remedies of the
 759 State provided in this contract are in addition to any other rights and
 760 remedies provided by law.
 761

762 **(C) Costs and Charges.** All costs and charges incurred by the State,
 763 together with the cost of completing the work under contract, will be

764 deducted from any monies due or which would or might have become due
 765 to the Contractor had it been allowed to complete the work under the
 766 contract. If such expense exceeds the sum which would have been
 767 payable under the contract, then the Contractor and the surety shall be
 768 liable and shall pay the State the amount of the excess.
 769

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

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

785 **108.12 Termination for Convenience.**

786
 787 **(A) Terminations.** The Director may, when the interests of the State so
 788 require, terminate this contract in whole or in part, for the convenience of
 789 the State. The Director will give written notice of the termination to the
 790 Contractor specifying the part of the contract terminated and when
 791 termination becomes effective.
 792

793 **(B) Contractor's Obligations.** The Contractor shall incur no further
 794 obligations in connection with the terminated work and on the date set in
 795 the notice of termination the Contractor shall stop work to the extent
 796 specified. The Contractor shall also terminate outstanding orders and
 797 subcontracts as they relate to the terminated work. The Contractor shall
 798 settle the liabilities and claims arising out of the termination of subcontracts
 799 and orders connected with the terminated work subject to the State's
 800 approval. The Engineer may direct the Contractor to assign the
 801 Contractor's right, title, and interest under terminated orders or subcontracts
 802 to the State. The Contractor must still complete the work not terminated by
 803 the notice of termination and may incur obligations as necessary to do so.
 804

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

- 808 (1) Any completed work.
809
- 810 (2) Any partially completed construction, goods, materials, parts,
811 tools, dies, jigs, fixtures, drawings, information, and contract rights
812 (hereinafter called "construction material") that the Contractor has
813 specifically produced or specially acquired for the performance of the
814 terminated part of this contract.
815
- 816 (3) The Contractor shall protect and preserve all property in the
817 possession of the Contractor in which the State has an interest. If
818 the Engineer does not elect to retain any such property, the
819 Contractor shall use its best efforts to sell such property and
820 construction materials for the State's account in accordance with the
821 standards of HRS Chapter 490:2-706.
822
- 823 **(D) Compensation.**
824
- 825 (1) The Contractor shall submit a termination claim specifying the
826 amounts due because of the termination for convenience together
827 with cost or pricing data, submitted to the extent required by HAR
828 Subchapter 15, Chapter 3-122. If the Contractor fails to file a
829 termination claim within one year from the effective date of
830 termination, the Engineer may pay the Contractor, if at all, an amount
831 set in accordance with Subsection 108.12(D)(3).
832
- 833 (2) The Engineer and the Contractor may agree to a settlement
834 provided the Contractor has filed a termination claim supported by
835 cost or pricing data submitted as required and that the settlement
836 does not exceed the total contract price plus settlement costs
837 reduced by payments previously made by the State, the proceeds of
838 any sales of construction, supplies, and construction materials under
839 Subsection 108.12(C)(3), and the proportionate contract price of the
840 work not terminated.
841
- 842 (3) Absent complete agreement, the Engineer will pay the
843 Contractor the following amounts less any payments previously
844 made under the contract:
845
- 846 (a) The cost of all contract work performed prior to the
847 effective date of the notice of termination work plus a 5
848 percent markup on the actual direct costs, including amounts
849 paid to subcontractor, less amounts paid or to be paid for
850 completed portions of such work; provided, however, that if it
851 appears that the Contractor would have sustained a loss if the
852 entire contract would have been completed, no markup shall
853 be allowed or included and the amount of compensation shall

854 be reduced to reflect the anticipated rate of loss. No
 855 anticipated profit or consequential damage will be due or paid.

856
 857 **(b)** Subcontractors shall be paid a markup of 10 percent on
 858 their direct job costs incurred to the date of termination. No
 859 anticipated profit or consequential damage will be due or paid
 860 to any subcontractor. These costs must not include payments
 861 made to the Contractor for subcontract work during the
 862 contract period.

863
 864 **(c)** The total sum to be paid the Contractor shall not
 865 exceed the total contract price reduced by the amount of any
 866 sales of construction supplies, and construction materials.

867
 868 **(4)** Cost claimed, agreed to, or established by the State shall be
 869 in accordance with HAR Chapter 3-123.

870
 871 **108.13 Pre-Final and Final Inspections.**

872
 873 **(A) Inspection Requirements.** Before the Engineer undertakes a final
 874 inspection of any work, a pre-final inspection must first be conducted. The
 875 Contractor shall notify the Engineer that the work has reached substantial
 876 completion and is ready for pre-final inspection.

877
 878 **(B) Pre-Final Inspection.** Before notifying the Engineer that the work
 879 has reached substantial completion, the Contractor shall inspect the project
 880 and test all installed items with all of its subcontractors as appropriate. The
 881 Contractor shall also submit the following documents as applicable to the
 882 work:

- 883
 884 **(1)** All written guarantees required by the contract.
 885
 886 **(2)** Two accepted final field-posted drawings as specified in
 887 Section 648 – Field-Posted Drawings;
 888
 889 **(3)** Complete weekly certified payroll records for the Contractor
 890 and Subcontractors.
 891
 892 **(4)** Certificate of Plumbing and Electrical Inspection.
 893
 894 **(5)** Certificate of building occupancy as required.
 895
 896 **(6)** Certificate of Soil and Wood Treatments.
 897
 898 **(7)** Certificate of Water System Chlorination.
 899

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

902
903 (9) Maintenance Service Contract and two copies of a list of all
904 equipment installed.

905
906 (10) Current Tax clearance. The contractor will be required to
907 submit an additional tax clearance certificate when the final payment
908 is made.

909
910 (11) And any other final items and submittals required by the
911 contract documents.

912
913 (C) **Procedure.** When in compliance with the above requirements, the
914 Contractor shall notify the Engineer in writing that the project has reached
915 substantial completion and is ready for pre-final inspection.

916
917 The Engineer will then make a preliminary determination as to
918 whether or not the project is substantially complete and ready for pre-final
919 inspection. The Engineer may, in writing, postpone until after the pre-final
920 inspection the Contractor's submittal of any of the items listed in Subsection
921 108.13(B) – Pre-Final Inspection, herein, if in the Engineer's discretion it is
922 in the interest of the State to do so.

923
924 If, in the opinion of the Engineer, the project is not substantially
925 complete, the Engineer will provide the Contractor a punchlist of specific
926 deficiencies in writing which must be corrected or finished before the work
927 will be ready for a pre-final inspection. The Engineer may add to or
928 otherwise modify this punchlist from time to time. The Contractor shall take
929 immediate action to correct the deficiencies and must repeat all steps
930 described above including written notification that the work is ready for pre-
931 final inspection.

932
933 After the Engineer is satisfied that the project appears substantially
934 complete a final inspection shall be scheduled within ten working days after
935 receipt of the Contractor's latest letter of notification that the project is ready
936 for final inspection.

937
938 If, as a result of the pre-final inspection, the Engineer determines the
939 work is not substantially complete, the Engineer will inform the Contractor in
940 writing as to specific deficiencies which must be corrected before the work
941 will be ready for another pre-final inspection. If the Engineer finds the work
942 is substantially complete but finds deficiencies that must be corrected
943 before the work is ready for final inspection, the Engineer will prepare in
944 writing and deliver to the Contractor a punchlist describing such
945 deficiencies.

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

950
 951 When the date of substantial completion has been determined by the
 952 State, liquidated damages for the failure to complete the punchlist, if due to
 953 the State will be assessed in pursuant to Subsection 108.08(B) - Liquidated
 954 Damages for Failure to Complete the Punchlist.

955
 956 **(D) Punchlist; Clean Up and Final Inspection.** Upon receiving a
 957 punchlist after pre-final inspection, the Contractor shall promptly devote all
 958 required time, labor, equipment, materials and incidentals to correct and
 959 remedy all punchlist deficiencies. The Engineer may add to or otherwise
 960 modify this punchlist until substantial completion of the project.

961
 962 Before final inspection of the work, the Contractor shall clean all
 963 ground occupied by the Contractor in connection with the work of all
 964 rubbish, excess materials temporary structures and equipment, shall
 965 remove all graffiti and defacement of the work and all parts of the work and
 966 the worksite must be left in a neat and presentable condition to the
 967 satisfaction of the Engineer.

968
 969 Final inspection will occur within ten working days after the
 970 Contractor notifies the Engineer in writing that all punchlist deficiencies
 971 remaining after the pre-final inspection have been completed and the
 972 Engineer concurs. If the Engineer determines that deficiencies still remain
 973 at the final inspection, the work will not be accepted and the Engineer will
 974 notify the Contractor, in writing, of the deficiencies which shall be corrected
 975 and the steps above repeated.

976
 977 If the Contractor fails to correct the deficiencies and complete the
 978 work by the established or agreed date, the State may correct the
 979 deficiencies by whatever method it deems appropriate and deduct the cost
 980 from any payments due the Contractor.

981
 982 **108.14 Substantial Completion and Final Acceptance.**

983
 984 **(A) Substantial Completion.** When the Engineer finds that the
 985 Contractor has satisfactorily completed all work for the project in
 986 compliance with the contract, with the exception of the planting period and
 987 the plant establishment period, the Engineer will notify the Contractor, in
 988 writing, of the project's substantial completion, effective as of the date of the
 989 final inspection. The substantial completion date shall determine end of
 990 contract time and relieve contractor of any additional accumulation of
 991 liquidated damages for failure to complete the punchlist.

992
 993 **(B) Final Acceptance.** When the Engineer finds that the Contractor has
 994 satisfactorily completed all contract work in compliance with the contract
 995 including all plant establishment requirements, and all the materials have
 996 been accepted by the State, the Engineer will issue a Final Acceptance
 997 Letter. The Final Acceptance date shall determine the commencement of
 998 all guaranty periods subject to Subsection 108.16 – Contractor’s
 999 Responsibility for Work; Risk of Loss or Damage.

1000
 1001 **108.15 Use of Structure or Improvement.** The State has the right to use the
 1002 structure, equipment, improvement, or any part thereof, at any time after it is
 1003 considered by the Engineer as available. In the event that the structure,
 1004 equipment or any part thereof is used by the State before final acceptance, the
 1005 Contractor is not relieved of its responsibility to protect and preserve all the work
 1006 until final acceptance.

1007
 1008 **108.16 Contractor’s Responsibility for Work; Risk of Loss or Damage.**
 1009 Until the written notice of final acceptance has been received, the Contractor shall
 1010 take every precaution against loss or damage to any part of the work by the action
 1011 of the elements or from any other cause whatsoever, whether arising from the
 1012 performance or from the non-performance of the work. The Contractor shall
 1013 rebuild, repair, restore and make good all loss or damage to any portion of the
 1014 work resulting from any cause before its receipt of the written notice of final
 1015 acceptance and shall bear the risk and expense thereof.

1016
 1017 The risk of loss or damage to the work from any hazard or occurrence that
 1018 may or may not be covered by a builder’s risk policy is that of the Contractor and
 1019 Surety, unless such risk of loss is placed elsewhere by express language in the
 1020 contract documents.

1021
 1022 **108.17 Guarantee of Work.**

1023
 1024 **(1)** Regardless of, and in addition to, any manufacturers’ warranties, all
 1025 work and equipment shall be guaranteed by the Contractor against defects
 1026 in materials, equipment or workmanship for one year from the date of final
 1027 acceptance or as otherwise specified in the contract documents.

1028
 1029 **(2)** When the Engineer determines that repairs or replacements of any
 1030 guaranteed work and equipment is necessary due to materials, equipment,
 1031 or workmanship which are inferior, defective, or not in accordance with the
 1032 terms of the contract, the Contractor shall, at no increase in contract price
 1033 or contract time, and within five working days of receipt of written notice
 1034 from the State, commence to all of the following:

1035
 1036 **(a)** Correct all noted defects and make replacements, as directed
 1037 by the Engineer, in the equipment and work.

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(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.

(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:

- 1084 (1) All written guarantees required by the contract.
1085
1086 (2) Complete and certified weekly payrolls for the Contractor and
1087 its subcontractor's.
1088
1089 (3) Certificate of plumbing and electrical inspection.
1090
1091 (4) Certificate of building occupancy.
1092
1093 (5) Certificate for soil treatment and wood treatment.
1094
1095 (6) Certificate of water system chlorination.
1096
1097 (7) Certificate of elevator inspection, boiler and pressure pipe
1098 installation.
1099
1100 (8) Tax clearance.
1101
1102 (9) All other documents required by the Contract or by law.
1103

1104 **(B) Failure to Meet Closing Requirements.** The Contractor shall meet
1105 the applicable closing requirements within 60 days from the date of Project
1106 Acceptance or the agreed to Punchlist complete date. Should the
1107 Contractor fail to comply with these requirements, the Engineer may
1108 terminate the contract for cause."
1109

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END OF SECTION 108