

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 than thirty (30) calendar days after the contract certification
8 date. The Engineer may suspend the contract before issuing the Notice To
9 Proceed, in which case the Contractor’s remedies are exclusively those set forth in
10 Subsection 108.10 – Suspension of Work.
11

12 The Contractor shall be allowed up to fourteen (14) calendar days after the
13 Notice to Proceed to begin physical work. The Start Work Date will be established
14 when this period ends or on the actual day that physical work begins, whichever is
15 first. Charging of Contract Time will begin on the Start Work Date. The Contractor
16 shall notify the Engineer, in writing, at least five (5) working days before beginning
17 physical 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 twenty four (24) hours
39 before restarting physical work after a suspension of work pursuant to Subsection
40 108.10 – 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 twenty-
54 one (21) calendar days from award. Until the items listed below are received and
55 found acceptable by the Engineer, the Contractor shall not start physical work
56 unless otherwise authorized to do so in writing and subject to such conditions set
57 by the Engineer. Charging of Contract Time will not be delayed, and additional
58 contract 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 (8)
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 (5) working days
132 after the occurrence of the event that causes a delay or justifies a contract
133 time 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 thirty (30)
159 days to acquire and the delay is not caused by the Contractor, and
160 provided 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 thirty (30) days to acquire
163 from 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 (5) 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 (1) 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 (5) 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**
 300 **One Hundred (100) Working Days or One Hundred Forty (140)**
 301 **Calendar Days or Less.** For contracts of \$2,000,000 or less or for
 302 contract time of one hundred (100) working days or one hundred
 303 forty (140) calendar days or less, the progress schedule will be a
 304 Time Scaled Logic Diagram (TSLD). The Contractor shall submit a
 305 TSLD submittal package meeting the following requirements and
 306 having these essential and distinctive elements:

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

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

358 for the work to be done in the activity. These columns shall
359 be to the left of the bar chart.

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

371
372 **(a)** The information and requirements listed in Subsection
373 108.06(A)(1) – For Contracts \$2,000,000 or Less or For
374 Contract Time One Hundred (100) Working Days or One
375 Hundred Forty (140) Calendar Days or Less.

376
377 **(b)** Additional reports and graphics available from the
378 software as requested by the Engineer.

379
380 **(c)** Sufficient detail to allow at least weekly monitoring of
381 the Contractor and subcontractor's operations.

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

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

393
394 **(f)** Latest start and finish dates for critical path activities.

395
396 **(g)** Identify responsible subcontractor, supplier, and others
397 for their respective activity.

398
399 **(h)** No individual activity shall have duration of more than
400 twenty (20) calendar days unless requested and approved by
401 the Engineer.
402

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

408
409 (j) Incorporate all physical access and availability
410 restraints.

411
412 **(B) Inspection and Testing.** All schedules shall provide reasonable
413 time and opportunity for the Engineer to inspect and test each work activity.
414

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

437
438 **(D) Initial Progress Schedule.** The Contractor shall submit an initial
439 progress schedule. The initial progress schedule shall consist of the
440 following:

441
442 (1) Four sets of the TSLD schedule.

443
444 (2) All the software files and data to re-create the TSLD in a
445 computerized software format as specified by the Engineer.

446
447 (3) A listing of equipment that is anticipated to be used on the
448 project. Including the type, size, make, year of manufacture, and all

449 information necessary to identify the equipment in the Rental Rate
450 Blue Book for Construction Equipment.

451
452 **(4)** An anticipated manpower requirement graph plotting contract
453 time and total manpower requirement. This may be superimposed
454 over the payment graph.

455
456 **(5)** A Method Statement that is a detailed narrative describing the
457 work to be done and the method by which the work shall be
458 accomplished for each major activity. A major activity is an activity
459 that:

460
461 **(a)** Has a duration longer than five (5) days.

462
463 **(b)** Is a milestone activity.

464
465 **(c)** Is a contract item that exceeds \$10,000 on the contract
466 cost proposal.

467
468 **(d)** Is a critical path activity.

469
470 **(e)** Is an activity designated as such by the Engineer.

471
472 Each Method Statement shall include the following items
473 needed to fulfill the schedule:

474
475 **(a)** Quantity, type, make, and model of equipment.

476
477 **(b)** The manpower to do the work, specifying worker
478 classification.

479
480 **(c)** The production rate per eight (8) hour day, or the
481 working hours established by the contract documents needed
482 to meet the time indicated on the schedule. If the production
483 rate is not for eight (8) hours, the number of working hours
484 shall be indicated.

485
486 **(6)** Two sets of color time-scaled project evaluation and review
487 technique charts ("PERT") using the activity box template of Logic –
488 Early Start or such other template designated by the Engineer.

489
490 If the contract documents establish a sequence or order for the work,
491 the initial progress schedule shall conform to such sequence or order.

492
493 **(E) Contractor's Continuing Schedule Submittal Requirements.**
494 After the acceptance of the initial TSLD and when construction starts, the

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

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

511
512 The Contractor shall submit updates of the anticipated work
513 completion graph, equipment listing, manpower requirement graph or
514 method statement when requested by the Engineer. The Contractor shall
515 submit such updates within four (4) calendar days from the date of the
516 request by the Engineer.

517
518 The Engineer may withhold progress payment until the Contractor is
519 in compliance with all schedule update requirements.

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

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

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

541 The State may accept the work before the completion date is established,
542 but is not obligated to do so.

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

551
552 **(I) Contractor Responsibilities.** The Contractor shall promptly
553 respond to any inquiries from the Engineer regarding any schedule
554 submission. The Contractor shall adjust the schedule to address directives
555 from the Engineer and shall resubmit the TSLD package to the Engineer
556 until the Engineer finds it acceptable.

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

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

572
573 The Contractor shall bring to weekly meetings a detailed work schedule
574 showing the next three (3) weeks' work. Number of copies of the detailed work
575 schedule to be submitted will be determined by the Engineer. The three (3) week
576 schedule is in addition to the TSLD and shall in no way be considered as a
577 substitute for the TSLD or vice versa. The three (3) week schedule shall show:

578
579 **(a)** All construction events, traffic control and BMP related activities in
580 such detail that the Engineer will be able to determine at what location and
581 type of work will be done for any day for the next three (3) weeks. This is
582 for the State to use to plan its manpower requirements for that time period.

583
584 **(b)** The duration of all events and delays.

585

586 (c) The critical path clearly marked in red or marked in a manner that
 587 makes it clearly distinguishable from other paths and is acceptable to the
 588 Engineer.

589
 590 (d) Critical submittals and requests for information (RFI's).

591
 592 (e) The project title, project number, date created, period the schedule
 593 covers, Contractor's name and creator of the schedule on each page.

594
 595 Two (2) days prior to each weekly meeting, the Contractor shall
 596 submit a list of outstanding submittals, RFIs and issues that require
 597 discussion.

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

606
 607 When the Contractor fails to reach substantial completion of the work for
 608 which liquidated damages are specified, within the time or times fixed in the
 609 contract or any extension thereof, in addition to all other remedies for breach that
 610 may be available to the State, the Contractor shall pay liquidated damages to the
 611 State, in the amount of \$ 5,000.00 per working day.

612
 613 (A) **Liquidated Damages Upon Termination.** If the State terminates
 614 on account of Contractor's default, liquidated damages may be charged
 615 against the defaulting Contractor and its surety until final completion of
 616 work.

617
 618 (B) **Liquidated Damages for Failure to Complete the Punchlist.** The
 619 Contractor shall complete the work on any punchlist created after the pre-
 620 final inspection, within the contract time or any extension thereof.

621
 622 When the Contractor fails to complete the work on such punchlist
 623 within the contract time or any extension thereof, the Contractor shall pay
 624 liquidated damages to the State of 20 percent of the amount of liquidated
 625 damages established for failure to substantially complete the work within
 626 contract time. Liquidated damages shall not be assessed for the period
 627 between:

628
 629 (1) Notice from the Contractor that the project is substantially
 630 complete and the time the punchlist is delivered to the Contractor.

631

632 (2) The date of the completion of punchlist as determined by the
633 Engineer and the date of the successful final inspection, and
634

635 (3) The date of the Final Inspection that results in Substantial
636 Completion and the receipt by the Contractor of the written notice of
637 Substantial Completion.
638

639 **(C) Actual Damages Recoverable If Liquidated Damages Deemed**
640 **Unenforceable.** In the event a court of competent jurisdiction holds that
641 any liquidated damages assessed pursuant to this contract are
642 unenforceable, the State will be entitled to recover its actual damages for
643 Contractor's failure to complete the work, or any designated portion of the
644 work within the time set by the contract.
645

646 **108.09 Rental Fees for Unauthorized Lane Closure or Occupancy.** In
647 addition to all other remedies available to the State for Contractor's breach of the
648 terms of the contract, the Engineer will assess the rental fees in the amount of
649 \$2,500 for every one-to fifteen-minute increment for each roadway lane closed to
650 public use or occupied beyond the time periods authorized in the contract or by the
651 Engineer. The State may, at its discretion, deduct the amount from monies due or
652 that may become due under the contract. The rental fee may be waived in whole
653 or part if the Engineer determines that the unauthorized period of lane closure or
654 occupancy was due to factors beyond the control of the Contractor. Equipment
655 breakdown is not a cause to waive liquidated damages.
656

657 **108.10 Suspension of Work.**
658

659 **(A) Suspension of Work.** The Engineer may, by written order, suspend
660 the performance of the work, either in whole or in part, for such periods as
661 the Engineer may deem necessary, for any cause, including but not limited
662 to:
663

664 (1) Weather or soil conditions considered unsuitable for
665 prosecution of the work.
666

667 (2) Whenever a redesign that may affect the work is deemed
668 necessary by the Engineer.
669

670 (3) Unacceptable noise or dust arising from the construction even
671 if it does not violate any law or regulation.
672

673 (4) Failure on the part of the Contractor to:
674

675 (a) Correct conditions unsafe for the general public or for
676 the workers.
677

- 678 (b) Carry out orders given by the Engineer.
 679
 680 (c) Perform the work in strict compliance with the
 681 provisions of the contract.
 682
 683 (d) Provide adequate supervision on the jobsite.
 684 (5) The convenience of the State.
 685

686 **(B) Partial and Total Suspension.** Suspension of work on some but
 687 not all items of work shall be considered a “partial suspension”.
 688 Suspension of work on all items shall be considered “total suspension”.
 689 The period of suspension shall be computed from the date set out in the
 690 written order for work to cease until the date of the order for work to
 691 resume.
 692

693 **(C) Reimbursement to Contractor.** In the event that the Contractor is
 694 ordered by the Engineer in writing as provided herein to suspend all work
 695 under the contract for the reasons specified in Subsections 108.10(A)(2),
 696 108.10(A)(3), or 108.10(A)(5) of the “Suspension of Work” paragraph, the
 697 Contractor may be reimbursed for actual direct costs incurred on work at
 698 the jobsite, as authorized in writing by the Engineer, including costs
 699 expended for the protection of the work. An allowance of 5 percent for
 700 indirect categories of delay costs will be paid on any reimbursed direct
 701 costs, including extended branch and home-office overhead and delay
 702 impact costs. No allowance will be made for anticipated profits. Payment
 703 for equipment which is ordered to standby during such suspension of work
 704 shall be made as described in Subsection 109.06(H) - Idle and Standby
 705 Equipment.
 706

707 **(D) Cost Adjustment.** If the performance of all or part of the work is
 708 suspended for reasons beyond the control of the Contractor except an
 709 adjustment shall be made for any increase in cost of performance of this
 710 contract (excluding profit) necessarily caused by such suspension, and the
 711 contract modified in writing accordingly.
 712

713 However, no adjustment to the contract price shall be made for any
 714 suspension, delay, or interruption:
 715

- 716 (1) For weather related conditions.
 717
 718 (2) To the extent that performance would have been so
 719 suspended, delayed, or interrupted by any other cause, including the
 720 fault or negligence of the Contractor.
 721
 722 (3) Or, for which an adjustment is provided for or excluded under
 723 any other provision of this Contract.

724
725 **(E) Claims for Adjustment.** Any adjustment in contract price made
726 shall be determined in accordance with Subsections 104.02 – Changes and
727 104.06 – Methods of Price Adjustment.
728

729 Any claims for such compensation shall be filed in writing with the
730 Engineer within thirty (30) days after the date of the order to resume work or
731 the claim will not be considered. The claim shall conform to the
732 requirements of Subsection 107.15(D) – Making of a Claim. The Engineer
733 will take the claim under consideration, may make such investigations as
734 are deemed necessary and will be the sole judge as to the equitability of the
735 claim. The Engineer’s decision will be final.
736

737 **(F) No Adjustment.** No provision of this clause shall entitle the
738 Contractor to any adjustments for delays due to failure of its surety, the
739 cancellation or expiration of any insurance coverage required by the
740 contract documents, for suspensions made at the request of the Contractor,
741 for any delay required under the contract, for suspensions, either partial or
742 whole, made by the Engineer under Subsection 108.10(A)(4) of the
743 “Suspension of work” paragraph.
744

745 **108.11 Termination of Contract for Cause.**

746
747 **(A) Default.** If the Contractor refuses or fails to perform the work, or any
748 separable part thereof, with such diligence as will assure its completion
749 within the time specified in this contract, or any extension thereof, or
750 commits any other material breach of this contract, and further fails within
751 seven (7) days after receipt of written notice from the Engineer to
752 commence and continue correction of the refusal or failure with diligence
753 and promptness, the Engineer may, by written notice to the Contractor,
754 declare the Contractor in breach and terminate the Contractor’s right to
755 proceed with the work or the part of the work as to which there has been
756 delay or other breach of contract. In such event, the State may take over
757 the work, perform the same to completion, by contract or otherwise, and
758 may take possession of, and utilize in completing the work, the materials,
759 appliances, and plants as may be on the site of the work and necessary
760 therefore. Whether or not the Contractor’s right to proceed with the work is
761 terminated, the Contractor and the Contractor’s sureties shall be liable for
762 any damage to the State resulting from the Contractor’s refusal or failure to
763 complete the work within the specified time.
764

765 **(B) Additional Rights and Remedies.** The rights and remedies of the
766 State provided in this contract are in addition to any other rights and
767 remedies provided by law.
768

769 **(C) Costs and Charges.** All costs and charges incurred by the State,
 770 together with the cost of completing the work under contract, will be
 771 deducted from any monies due or which would or might have become due
 772 to the Contractor had it been allowed to complete the work under the
 773 contract. If such expense exceeds the sum which would have been
 774 payable under the contract, then the Contractor and the surety shall be
 775 liable and shall pay the State the amount of the excess.
 776

777 In case of termination, the Engineer will limit any payment to the
 778 Contractor to the part of the contract satisfactorily completed at the time of
 779 termination. Payment will not be made until the work has satisfactorily been
 780 completed and all required documents, including the tax clearance required
 781 by Subsection 109.11 – Final Payment are submitted by the Contractor.
 782 Termination shall not relieve the Contractor or Surety from liability for
 783 liquidated damages.
 784

785 **(D) Erroneous Termination for Cause.** If, after notice of termination of
 786 the Contractor's right to proceed under this section, it is determined for any
 787 reason that good cause did not exist to allow the State to terminate as
 788 provided herein, the rights and obligations of the parties shall be the same
 789 as, and the relief afforded the Contractor shall be limited to, the provisions
 790 contained in Subsection 108.12 – Termination for Convenience.
 791

792 **108.12 Termination For Convenience.**

793
 794 **(A) Terminations.** The Director may, when the interests of the State so
 795 require, terminate this contract in whole or in part, for the convenience of
 796 the State. The Director will give written notice of the termination to the
 797 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 subcontracts
 806 and orders connected with the terminated work subject to the State's
 807 approval. The Engineer may direct the Contractor to assign the
 808 Contractor's right, title, and interest under terminated orders or subcontracts
 809 to the State. The Contractor must still complete the work not terminated by
 810 the notice of termination and may incur obligations as necessary to do so.
 811

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

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

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

863
864 **(b)** Subcontractors shall be paid a markup of 10 percent on
865 their direct job costs incurred to the date of termination. No
866 anticipated profit or consequential damage will be due or paid
867 to any subcontractor. These costs must not include payments
868 made to the Contractor for subcontract work during the
869 contract period.

870
871 **(c)** The total sum to be paid the Contractor shall not
872 exceed the total contract price reduced by the amount of any
873 sales of construction supplies, and construction materials.

874
875 **(4)** Cost claimed, agreed to, or established by the State shall be
876 in accordance with HAR Chapter 3-123.

877

878 **108.13 Pre-Final and Final Inspections.**

879

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

884

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

890

891 **(1)** All written guarantees required by the contract.

892

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

895

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

898

899 **(4)** Certificate of Plumbing and Electrical Inspection.

900

901 **(5)** Certificate of building occupancy as required.

902

903 **(6)** Certificate of Soil and Wood Treatments.

904

905 **(7)** Certificate of Water System Chlorination.

906

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

909
910 (9) Maintenance Service Contract and two copies of a list of all
911 equipment installed.

912
913 (10) Current Tax clearance. The contractor will be required to
914 submit an additional tax clearance certificate when the final payment
915 is made.

916
917 (11) And any other final items and submittals required by the
918 contract documents.

919
920 (C) **Procedure.** When in compliance with the above requirements, the
921 Contractor shall notify the Engineer in writing that the project has reached
922 substantial completion and is ready for pre-final inspection.

923
924 The Engineer will then make a preliminary determination as to
925 whether or not the project is substantially complete and ready for pre-final
926 inspection. The Engineer may, in writing, postpone until after the pre-final
927 inspection the Contractor's submittal of any of the items listed in Subsection
928 108.13(B) – Pre-Final Inspection, herein, if in the Engineer's discretion it is
929 in the interest of the State to do so.

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

939
940 After the Engineer is satisfied that the project appears substantially
941 complete a final inspection shall be scheduled within ten (10) working days
942 after receipt of the Contractor's latest letter of notification that the project is
943 ready for final inspection.

944
945 If, as a result of the pre-final inspection, the Engineer determines the
946 work is not substantially complete, the Engineer will inform the Contractor in
947 writing as to specific deficiencies which must be corrected before the work
948 will be ready for another pre-final inspection. If the Engineer finds the work
949 is substantially complete but finds deficiencies that must be corrected
950 before the work is ready for final inspection, the Engineer will prepare in
951 writing and deliver to the Contractor a punchlist describing such
952 deficiencies.

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

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

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

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

976 Final inspection will occur within ten (10) working days after the
 977 Contractor notifies the Engineer in writing that all punchlist deficiencies
 978 remaining after the pre-final inspection have been completed and the
 979 Engineer concurs. If the Engineer determines that deficiencies still remain
 980 at the final inspection, the work will not be accepted and the Engineer will
 981 notify the Contractor, in writing, of the deficiencies which shall be corrected
 982 and the steps above repeated.
 983

984 If the Contractor fails to correct the deficiencies and complete the
 985 work by the established or agreed date, the State may correct the
 986 deficiencies by whatever method it deems appropriate and deduct the cost
 987 from any payments due the Contractor.
 988

989 **108.14 Substantial Completion and Final Acceptance.**
 990

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

999

1000 **(B) Final Acceptance.** When the Engineer finds that the Contractor has
 1001 satisfactorily completed all contract work in compliance with the contract
 1002 including all plant establishment requirements, and all the materials have
 1003 been accepted by the State, the Engineer will issue a Final Acceptance
 1004 Letter. The Final Acceptance date shall determine the commencement of
 1005 all guaranty periods subject to Subsection 108.16 – Contractor’s
 1006 Responsibility for Work; Risk of Loss or Damage.

1007

1008 **108.15 Use of Structure or Improvement.** The State has the right to use the
 1009 structure, equipment, improvement, or any part thereof, at any time after it is
 1010 considered by the Engineer as available. In the event that the structure,
 1011 equipment or any part thereof is used by the State before final acceptance, the
 1012 Contractor is not relieved of its responsibility to protect and preserve all the work
 1013 until final acceptance.

1014

1015 **108.16 Contractor’s Responsibility for Work; Risk of Loss or Damage.**
 1016 Until the written notice of final acceptance has been received, the Contractor shall
 1017 take every precaution against loss or damage to any part of the work by the action
 1018 of the elements or from any other cause whatsoever, whether arising from the
 1019 performance or from the non-performance of the work. The Contractor shall
 1020 rebuild, repair, restore and make good all loss or damage to any portion of the
 1021 work resulting from any cause before its receipt of the written notice of final
 1022 acceptance and shall bear the risk and expense thereof.

1023

1024 The risk of loss or damage to the work from any hazard or occurrence that
 1025 may or may not be covered by a builder’s risk policy is that of the Contractor and
 1026 Surety, unless such risk of loss is placed elsewhere by express language in the
 1027 contract documents.

1028

1029 **108.17 Guarantee of Work.**

1030

1031 **(1)** Regardless of, and in addition to, any manufacturers’ warranties, all
 1032 work and equipment shall be guaranteed by the Contractor against defects
 1033 in materials, equipment or workmanship for one (1) year from the date of
 1034 final acceptance or as otherwise specified in the contract documents.

1035

1036 **(2)** When the Engineer determines that repairs or replacements of any
 1037 guaranteed work and equipment is necessary due to materials, equipment,
 1038 or workmanship which are inferior, defective, or not in accordance with the
 1039 terms of the contract, the Contractor shall, at no increase in contract price
 1040 or contract time, and within five (5) working days of receipt of written notice
 1041 from the State, commence to all of the following:

1042

1043 **(a)** Correct all noted defects and make replacements, as directed
 1044 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:

- 1091 (1) All written guarantees required by the contract.
1092
1093 (2) Complete and certified weekly payrolls for the Contractor and
1094 its subcontractor's.
1095
1096 (3) Certificate of plumbing and electrical inspection.
1097
1098 (4) Certificate of building occupancy.
1099
1100 (5) Certificate for soil treatment and wood treatment.
1101
1102 (6) Certificate of water system chlorination.
1103
1104 (7) Certificate of elevator inspection, boiler and pressure pipe
1105 installation.
1106
1107 (8) Tax clearance.
1108
1109 (9) All other documents required by the Contract or by law.
1110

1111 **(B) Failure to Meet Closing Requirements.** The Contractor shall meet
1112 the applicable closing requirements within sixty (60) days from the date of
1113 Project Acceptance or the agreed to Punchlist complete date. Should the
1114 Contractor fail to comply with these requirements, the Engineer may
1115 terminate the contract for cause.”
1116
1117
1118
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1120

END OF SECTION 108