

**108 – PROSECUTION AND PROGRESS**

1  
2  
3 **108.01 Notice to Proceed (NTP).** A notice to proceed will be issued to the  
4 Contractor. It shall establish the date the Contractor is expected to start work  
5 and from which contract time will commence.  
6

7 The Engineer will consult with the Contractor in an effort to set a mutually  
8 agreeable notice to proceed date. When the notice to proceed date is set by  
9 mutual agreement, Contractor shall have no claim for delay impact costs  
10 resulting from the issuance of the notice to proceed for such date.  
11

12 In the absence of an agreed notice to proceed date, the Engineer will  
13 issue a notice to proceed to the Contractor. In the event that the Engineer  
14 establishes a starting date that is more than 90 days after the effective date of  
15 the contract, the Contractor may submit a claim in accordance with Subsection  
16 107.15 – Disputes and Claims for increased labor and material costs which are  
17 directly attributable to the delay beyond the first 90 days. The Engineer may  
18 suspend the contract before issuing the notice to proceed, in which case the  
19 Contractor's remedies are exclusively those set forth in Subsection 108.10 –  
20 Suspension of Work.  
21

22 The Contractor shall begin work no later than 10 working days from the  
23 date in the notice to proceed and shall diligently prosecute the same to  
24 completion within the contract time. In the event that the Contractor fails to  
25 start the work, the Engineer may terminate the contract in accordance with  
26 Subsection 108.11 – Termination of Contract for Cause. The Contractor shall  
27 notify the Engineer at least three working days before beginning work.  
28

29 The Contractor shall notify the Engineer at least 24 hours before restarting  
30 work after a suspension of work pursuant to Subsection 108.10 – Suspension of  
31 Work.  
32

33 The Contractor shall not begin work before the date in the notice to  
34 proceed. Any work done prior to the notice to proceed date will be considered  
35 unauthorized work. If the Engineer does not direct that the unauthorized work  
36 be removed, it shall be paid for after the notice to proceed date and only if it is  
37 acceptable.  
38

39 When construction is started, the Contractor shall work expeditiously and  
40 pursue the work diligently until it is complete. If a portion of the work is to be  
41 done in stages, the Contractor shall leave the area safe and usable for the user  
42 agency at the end of each stage.  
43

44 **108.02 Prosecution of Work.** Unless otherwise permitted by the Engineer,  
45 in writing, the Contractor shall not commence with physical construction unless  
46 sufficient materials and equipment are available for either continuous  
47 construction or completion of a specified portion of the work.  
48

### 108.03

49 **108.03 Preconstruction Data Submittal.** The awardee shall submit to the  
50 Engineer for information and review the pre-construction data within 15 days  
51 from the date of notice of intent to enter the contract. Until the items listed  
52 below are received and found acceptable by the Engineer, the Contractor shall  
53 not commence work unless otherwise authorized to do so in writing and subject  
54 to such conditions set by the Engineer. No progress payment will be made to  
55 the Contractor until the Engineer acknowledges, in writing, receipt of the  
56 following preconstruction data submittals acceptable to the Engineer:

- 57
- 58 (1) List of the Superintendent and other Supervisory Personnel.
- 59
- 60 (2) Name of person(s) authorized to sign for the Contractor.
- 61
- 62 (3) Work Schedule.
- 63
- 64 (4) Initial Progress Schedule (See Subsection 108.06 – Progress  
65 Schedule).
- 66
- 67 (5) Water Pollution and Siltation Control Submittals.
- 68
- 69 (6) Solid Waste Disposal form.
- 70
- 71 (7) Tax Rates.
- 72
- 73 (8) Insurance Rates.
- 74
- 75 (9) Certificate of Insurance, satisfactory to the Engineer, indicating  
76 that the Contractor has in place all insurance coverage required by the  
77 contract documents.
- 78
- 79 (10) Schedule of agreed prices.
- 80
- 81 (11) List of suppliers.
- 82

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

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

94  
95 The Engineer may direct the removal of any worker(s) who does not carry  
96 out the assigned work in a proper and skillful manner or who is disrespectful,

97 intemperate, violent, or disorderly. The worker shall be removed forthwith by  
98 the Contractor and will not work again without the written permission of the  
99 Engineer.

## 101 **108.05 Contract Time.**

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

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

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

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

141  
142 Additional time to perform the extra work will be added to the  
143 time allowed in the contract without regard to the date the change  
144 directive was issued, even if the contract completion date has

145 passed. A change requiring time issued after contract time has  
146 expired will not constitute an excusal or waiver of pre-existing  
147 Contractor delay.  
148

149 **(2) Delay for Permits.** For delays in the routine application  
150 and processing time required to obtain necessary permits,  
151 including permits to be obtained from State agencies, on the  
152 condition that the delay is not caused by the Contractor, and  
153 provided that as soon as the delay occurs, the Contractor notifies  
154 the Engineer in writing that the permits are not available. Time  
155 extensions will be the exclusive relief granted on account of such  
156 delays.  
157

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

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

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

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

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

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

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

190 **(4) Delays in Delivery of Materials or Equipment.** For  
191 delays in delivery of materials or equipment, which occur as a  
192 result of unforeseeable causes beyond the control and without fault

193 of the Contractor, its subcontractor(s) or supplier(s), time  
194 extensions shall be the exclusive relief granted and no additional  
195 compensation will be paid the Contractor on account of such delay.  
196 The delay shall not exceed the difference between the originally  
197 scheduled delivery date and the actual delivery date. The  
198 Contractor may be granted an extension of time provided that it  
199 complies with the following procedures:

200  
201 (a) The Contractor's written notice to the Engineer must  
202 describe the delays and state the effect such delays may  
203 have on the critical path.  
204

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

210  
211 1. State specifically all reasons for the delay.  
212 Explain in a detailed chronology the effect of the delay  
213 on the critical path.  
214

215 2. Submit copies of purchase order(s), factory  
216 invoice(s), bill(s) of lading, shipping manifest(s),  
217 delivery tag(s), and any other documents to support  
218 the time extension request.  
219

220 3. Cite the start and end date of the delay and the  
221 time extension requested.  
222

223 (5) **Delays for Suspension of Work.** When the performance  
224 of the work is totally suspended for one or more days (calendar or  
225 working days, as appropriate) by order of the Engineer in  
226 accordance with Subsections 108.10(A)(1), 108.10(A)(2), or  
227 108.10(A)(5) the number of days from the effective date of the  
228 Engineer's order to suspend operations to the effective date of the  
229 Engineer's order to resume operations shall not be counted as  
230 contract time and the contract completion date will be adjusted.  
231 During periods of partial suspensions of the work, the Contractor  
232 will be granted a time extension only if the partial suspension  
233 affects the critical path. If the Contractor believes that an  
234 extension of time is justified for a partial suspension of work, it  
235 must request the extension in writing at least five working days  
236 before the partial suspension will affect the critical operation(s) in  
237 progress. The Contractor must show how the critical path was  
238 increased based on the status of the work and must also support its  
239 claim if requested, with statements from its subcontractors. A

## 108.05

240 suspension of work will not constitute a waiver of pre-existing  
241 Contractor delay.

242

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

245

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

249

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

254

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

257

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

264

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

268

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

271

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

274

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

278

279 **108.06 Progress Schedules.**

280

281 **(A) Forms of Schedule.** All schedules shall be submitted using the  
282 specific computer program designated in the bid documents. If no such  
283 scheduling software program is designated, then all schedules shall be  
284 submitted using the latest version of SureTrak® Project Manager by  
285 Primavera Systems, Inc.

286

287

288 Schedule submittals shall be as follows:  
289

290 **(1) For Contracts \$2,000,000 or less or For Contract Time**  
291 **100 Working Days or 140 Calendar Days or less.** For

292 contracts of \$2,000,000 or less or for contract time of 100 working  
293 days or 140 calendar days or less, the progress schedule will be a  
294 Time Scaled Logic Diagram (TSLD). The Contractor shall submit  
295 a TSLD submittal package and it shall meet the following  
296 requirements and have these essential and distinctive elements:  
297

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

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

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

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

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

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

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

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

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

336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383

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

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

(l) Have columns with the appropriate data in them for activity ID, description, original duration, remaining duration, early start, early finish, total float, percent complete, resources. The resource column shall list who is responsible for the work to be done in the activity. These columns shall be to the left of the bar chart.

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

(a) The information and requirements listed in A above.

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

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

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

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

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

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



384 (h) No individual activity shall have duration of more than  
385 20 calendar days unless requested and approved by the  
386 Engineer.

387  
388 (i) All activities shall have work breakdown structure  
389 codes and activity codes. The activity codes shall have  
390 coding that incorporates information for phase, location,  
391 who is responsible for doing work and type of operation and  
392 activity description.

393  
394 (j) Incorporate all physical access and availability  
395 restraints.

396  
397 **(B) Inspection and Testing.** All schedules shall provide reasonable  
398 time and opportunity for the Engineer to inspect and test each work  
399 activity.

400  
401 **(C) Engineer's Acceptance of Progress Schedule.** The submittal  
402 of, and the Engineer's receipt of any progress schedule, shall not be  
403 deemed an agreement to modify any terms or conditions of the contract.  
404 Any modifications to the contract terms and conditions that appear in or  
405 may be inferred from an acceptable schedule will not be valid or  
406 enforceable unless and until the Engineer exercises discretion to issue an  
407 appropriate change order. Nor shall any submittal or receipt imply the  
408 Engineer's approval of the schedule's breakdown, its individual elements,  
409 any critical path that may be shown, nor shall it obligate the State to make  
410 its personnel available outside normal working hours or the working hours  
411 established by the Contract in order to accommodate such schedule.  
412 The Contractor has the risk of all elements (whether or not shown) of the  
413 schedule and its execution. No claim for additional compensation, time,  
414 or both, shall be made by the Contractor or recognized by the Engineer  
415 for delays during any period for which an acceptable progress schedule or  
416 an updated progress schedule as required by Subsection 108.06(E) –  
417 Contractor's Continuing Schedule Submittal Requirements had not been  
418 submitted. Any acceptance or approval of the schedule shall be for  
419 general format only and shall not be deemed an agreement by the State  
420 that the construction means, methods, and resources shown on the  
421 schedule will result in work that conforms to the contract requirements or  
422 that the sequences or durations indicated are feasible.

423  
424 **(D) Initial Progress Schedule.** The Contractor shall submit an initial  
425 progress schedule. The initial progress schedule shall consist of the  
426 following:

- 427  
428 (1) Four sets of the TSLD schedule.  
429  
430 (2) All the software files and data to re-create the TSLD in a  
431 computerized software format as specified by the Engineer.

432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479

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

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

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

- (a) Has a duration longer than five days.
- (b) Is a milestone activity.
- (c) Is a contract item that exceeds \$10,000 on the contract cost proposal.
- (d) Is a critical path activity.
- (e) Is an activity designated as such by the Engineer.

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

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

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

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

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

491  
492 The Contractor shall submit with every update, in report form  
493 acceptable to the Engineer, a list of changes to the progress schedule  
494 since the previous schedule submittal. The Engineer may change the  
495 frequency of the submittal requirements but may not require a submittal of  
496 the schedule to be more than once a week. The Engineer may  
497 decrease the frequency of the submittal of the bi-weekly schedule.

498  
499 The Contractor shall submit updates of the anticipated work  
500 completion graph, equipment listing, manpower requirement graph or  
501 method statement when requested by the Engineer. The Contractor  
502 shall submit such updates within 4 calendar days from the date of the  
503 request by the Engineer.

504  
505 The Engineer may withhold progress payment until the Contractor  
506 is in compliance with all schedule update requirements

507  
508 **(F) Float.** All float appearing on a schedule is a shared commodity.  
509 Float does not belong to or exist for the exclusive use or benefit of either  
510 the State or the Contractor. The State or the Contractor has the  
511 opportunity to use available float until it is depleted. Float has no  
512 monetary value.

513  
514 **(G) Scheduled Meetings.** The Contractor shall meet on a bi-weekly  
515 basis with the Engineer to review the progress schedule. The  
516 Contractor shall have someone attending the meeting that can answer all  
517 questions on the TSLD and other schedule related submittals.

518  
519 **(H) Accelerated Schedule; Early Completion.** If the Contractor  
520 submits an accelerated schedule (shorter than the contract time), the  
521 Engineer's review and acceptance of an accelerated schedule does not  
522 constitute an agreement or obligation by the State to modify the contract  
523 time or completion date. The Contractor is solely responsible for and  
524 shall accept all risks and any delays, other than those that can be directly  
525 and solely attributable to the State, that may occur during the work, until  
526 the contract completion date. The contract time or completion date is  
527 established for the benefit of the State and cannot be changed without an

## 108.06

528 appropriate change order or final acceptance by the State. The State  
529 may accept the work before the completion date is established, but is not  
530 obligated to do so.

531

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

539

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

545

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

552

553 **108.07 Weekly Meeting.** In addition to the bi-weekly schedule meetings,  
554 the Contractor shall be available to meet once a week with the Engineer at the  
555 time and place as determined by the Engineer to discuss the work and its  
556 progress including but not limited to, the progress of the project, potential  
557 problems, coordination of work, submittals, erosion control reports, etc. The  
558 Contractor's personnel attending shall have the authority to make decisions and  
559 answer questions.

560

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

566

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

571

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

573

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

577

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

579

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

582

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

586

587 **108.08 Liquidated Damages for Failure to Complete the Work or Portions**  
 588 **of the Work on Time.** The actual amount of damages resulting from the

589 Contractor's failure to complete the contract in a timely manner is difficult to  
 590 accurately determine. Therefore the amount of such damages shall be

591 liquidated damages as set forth herein and in the special provisions. The State

592 may, at its discretion, deduct the amount from monies due or that may become

593 due under the contract.

594

595 When the Contractor fails to reach substantial completion of the work for  
 596 which liquidated damages are specified, within the time or times fixed in the  
 597 contract or any extension thereof, in addition to all other remedies for breach  
 598 that may be available to the State, the Contractor shall pay liquidated damages  
 599 to the State, in the amount specified in the contract documents.

600

601

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

606

607 (B) **Liquidated Damages for Failure to Complete the Punchlist.**

608 The Contractor shall complete the work on any punchlist created after  
 609 substantial completion, within the contract time or any extension thereof.

610

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

617

618 (1) Substantial completion of the work and the time the punchlist  
 619 is delivered to the Contractor.

620

## 108.08

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

624 (3) The date of the inspection that results in final acceptance  
625 and the receipt by the Contractor of the written notice of the final  
626 acceptance.  
627

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

635 **108.09 Rental Fees for Unauthorized Lane Closure or Occupancy.** In  
636 addition to all other remedies available to the State for Contractor's breach of the  
637 terms of the contract, the Engineer will assess the rental fees in the amount of  
638 \$500 for every one-to fifteen-minute increment for each roadway lane closed to  
639 public use or occupied beyond the time periods authorized in the contract or by  
640 the Engineer. The maximum amount assessed per day shall be \$5,000. The  
641 State may, at its discretion, deduct the amount from monies due or that may  
642 become due under the contract. The rental fee may be waived in whole or part  
643 if the Engineer determines that the unauthorized period of lane closure or  
644 occupancy was due to factors beyond the control of the Contractor.  
645

646 **108.10 Suspension of Work.**

647  
648 (A) **Suspension of Work.** The Engineer may, by written order,  
649 suspend the performance of the work, either in whole or in part, for such  
650 periods as the Engineer may deem necessary, for any cause, including  
651 but not limited to:  
652

653 (1) Weather or soil conditions considered unsuitable for  
654 prosecution of the work.  
655

656 (2) Whenever a redesign that may affect the work is deemed  
657 necessary by the Engineer.  
658

659 (3) Unacceptable noise or dust arising from the construction  
660 even if it does not violate any law or regulation.  
661

662 (4) Failure on the part of the Contractor to:  
663

664 (a) Correct conditions unsafe for the general public or for  
665 the workers.  
666

667 (b) Carry out orders given by the Engineer.  
668

669 (c) Perform the work in strict compliance with the  
670 provisions of the contract.

671  
672 (d) Provide adequate supervision on the jobsite.

673  
674 (5) The convenience of the State.

675  
676 **(B) Partial and Total Suspension.** Suspension of work on some but  
677 not all items of work shall be considered a "partial suspension".  
678 Suspension of work on all items shall be considered "total suspension".  
679 The period of suspension shall be computed from the date set out in the  
680 written order for work to cease until the date of the order for work to  
681 resume.

682  
683 **(C) Reimbursement to Contractor.** In the event that the Contractor  
684 is ordered by the Engineer in writing as provided herein to suspend all  
685 work under the contract for the reasons specified in Subsections  
686 108.10(A)(2), 108.10(A)(3), or 108.10(A)(5) of the "Suspension of Work"  
687 paragraph, the Contractor may be reimbursed for actual direct costs  
688 incurred on work at the jobsite, as authorized in writing by the Engineer,  
689 including costs expended for the protection of the work. An allowance of 5  
690 percent for indirect categories of delay costs will be paid on any  
691 reimbursed direct costs, including extended branch and home-office  
692 overhead and delay impact costs. No allowance will be made for  
693 anticipated profits. Payment for equipment which is ordered to standby  
694 during such suspension of work shall be made as described in Subsection  
695 109.06(H) - Idle and Standby Equipment.

696  
697 **(D) Cost Adjustment.** If the performance of all or part of the work is  
698 suspended for reasons beyond the control of the Contractor except an  
699 adjustment shall be made for any increase in cost of performance of this  
700 contract (excluding profit) necessarily caused by such suspension, and  
701 the contract modified in writing accordingly.

702  
703 However, no adjustment to the contract price shall be made for any  
704 suspension, delay, or interruption:

705  
706 (1) For weather related conditions.

707  
708 (2) To the extent that performance would have been so  
709 suspended, delayed, or interrupted by any other cause, including  
710 the fault or negligence of the Contractor.

711  
712 (3) Or, for which an adjustment is provided for or excluded  
713 under any other provision of this Contract.

714

## 108.10

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

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

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

## 735 108.11 Termination of Contract for Cause.

736  
737 **(A) Default.** If the Contractor refuses or fails to perform the work, or  
738 any separable part thereof, with such diligence as will assure its  
739 completion within the time specified in this contract, or any extension  
740 thereof, or commits any other material breach of this contract, and further  
741 fails within seven days after receipt of written notice from the Engineer to  
742 commence and continue correction of the refusal or failure with diligence  
743 and promptness, the Engineer may, by written notice to the Contractor,  
744 declare the Contractor in breach and terminate the Contractor’s right to  
745 proceed with the work or the part of the work as to which there has been  
746 delay or other breach of contract. In such event, the State may take  
747 over the work, perform the same to completion, by contract or otherwise,  
748 and may take possession of, and utilize in completing the work, the  
749 materials, appliances, and plants as may be on the site of the work and  
750 necessary therefore. Whether or not the Contractor’s right to proceed  
751 with the work is terminated, the Contractor and the Contractor’s sureties  
752 shall be liable for any damage to the State resulting from the Contractor’s  
753 refusal or failure to complete the work within the specified time.  
754

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

759 **(C) Costs and Charges.** All costs and charges incurred by the  
760 State, together with the cost of completing the work under contract, will  
761 be deducted from any monies due or which would or might have become  
762 due to the Contractor had it been allowed to complete the work under the



763 contract. If such expense exceeds the sum which would have been  
764 payable under the contract, then the Contractor and the surety shall be  
765 liable and shall pay the State the amount of the excess.  
766

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

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

#### 783 **108.12 Termination For Convenience.**

784

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

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

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

808 (1) Any completed work.  
809

## 108.12

810 (2) Any partially completed construction, goods, materials,  
811 parts, tools, dies, jigs, fixtures, drawings, information, and  
812 contract rights (hereinafter called "construction material") that the  
813 Contractor has specifically produced or specially acquired for the  
814 performance of the 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  
821 the standards of HRS Chapter 490:2-706.

### 822 (D) Compensation.

823  
824 (1) The Contractor shall submit a termination claim specifying  
825 the amounts due because of the termination for convenience  
826 together with cost or pricing data, submitted to the extent required  
827 by HAR Subchapter 15, Chapter 3-122. If the Contractor fails to  
828 file a termination claim within one year from the effective date of  
829 termination, the Engineer may pay the Contractor, if at all, an  
830 amount set in accordance with Subsection 108.12(D)(3).

831  
832 (2) The Engineer and the Contractor may agree to a settlement  
833 provided the Contractor has filed a termination claim supported by  
834 cost or pricing data submitted as required and that the settlement  
835 does not exceed the total contract price plus settlement costs  
836 reduced by payments previously made by the State, the proceeds  
837 of any sales of construction, supplies, and construction materials  
838 under Subsection 108.12(C)(3), and the proportionate contract  
839 price of the work not terminated.

840  
841 (3) Absent complete agreement, the Engineer will pay the  
842 Contractor the following amounts less any payments previously  
843 made under the contract:

844  
845 (a) The cost of all contract work performed prior to the  
846 effective date of the notice of termination work plus a 5  
847 percent markup on the actual direct costs, including  
848 amounts paid to subcontractor, less amounts paid or to be  
849 paid for completed portions of such work; provided,  
850 however, that if it appears that the Contractor would have  
851 sustained a loss if the entire contract would have been  
852 completed, no markup shall be allowed or included and the  
853 amount of compensation shall be reduced to reflect the  
854 anticipated rate of loss. No anticipated profit or  
855 consequential damage will be due or paid.

856  
857

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

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

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

871

### 872 **108.13 Pre-Final and Final Inspections.**

873

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

878

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

884

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

886

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

889

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

892

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

894

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

896

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

898

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

900

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

903

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

**108.13**

906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952

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

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

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

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

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

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

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

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

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

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

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

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

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

983  
984 **108.14 Final Acceptance.** When the Engineer finds that the project has  
985 been satisfactorily completed in compliance with the contract, the Engineer will  
986 notify the Contractor in writing of the project's completion and acceptance and  
987 will notify the Contractor in writing of its acceptance effective as of the date of the  
988 final inspection. The final acceptance date shall determine end of contract  
989 time, liquidated damages for failure to complete the punchlist and  
990 commencement of all guaranty periods subject to Subsection 108.16 -  
991 Contractor's Responsibility for Work; Risk of Loss or Damage.

992  
993 **108.15 Use of Structure or Improvement.** The State has the right to use  
994 the structure, equipment, improvement, or any part thereof, at any time after it  
995 is considered by the Engineer as available. In the event that the structure,  
996 equipment or any part thereof is used by the State before final acceptance, the  
997 Contractor is not relieved of its responsibility to protect and preserve all the work  
998 until final acceptance.

999

## 108.16

1000 **108.16 Contractor's Responsibility for Work; Risk of Loss or Damage.**  
1001 Until the written notice of final acceptance has been received, the Contractor  
1002 shall take every precaution against loss or damage to any part of the work by the  
1003 action of the elements or from any other cause whatsoever, whether arising from  
1004 the performance or from the non-performance of the work. The Contractor  
1005 shall rebuild, repair, restore and make good all loss or damage to any portion of  
1006 the work resulting from any cause before its receipt of the written notice of final  
1007 acceptance and shall bear the risk and expense thereof.

1008  
1009 The risk of loss or damage to the work from any hazard or occurrence that  
1010 may or may not be covered by a builder's risk policy is that of the Contractor and  
1011 Surety, unless such risk of loss is placed elsewhere by express language in the  
1012 contract documents.

1013  
1014 **108.17 Guarantee of Work.**

1015  
1016 (1) Regardless of, and in addition to, any manufacturers' warranties,  
1017 all work and equipment shall be guaranteed by the Contractor against  
1018 defects in materials, equipment or workmanship for one year from the  
1019 date of final acceptance or as otherwise specified in the contract  
1020 documents.

1021  
1022 (2) When the Engineer determines that repairs or replacements of any  
1023 guaranteed work and equipment is necessary due to materials,  
1024 equipment, or workmanship which are inferior, defective, or not in  
1025 accordance with the terms of the contract, the Contractor shall, at no  
1026 increase in contract price or contract time, and within five working days of  
1027 receipt of written notice from the State, commence to all of the following:

1028  
1029 (a) Correct all noted defects and make replacements, as  
1030 directed by the Engineer, in the equipment and work.

1031  
1032 (b) Repair or replace to new or pre-existing condition any  
1033 damages resulting from such defective materials, equipment or  
1034 installation thereof.

1035  
1036 (3) The State will be entitled to the benefit of all manufacturers and  
1037 installers warranties that extend beyond the terms of the Contractor's  
1038 guaranty regardless of whether or not such extended warranty is required  
1039 by the contract documents. The Contractor shall prepare and submit all  
1040 documents required by the providers of such warranties to make them  
1041 effective, and submit copies of such documents to the Engineer. If an  
1042 available extended warranty cannot be transferred or assigned to the  
1043 State as the ultimate user, the Contractor shall notify the Engineer who  
1044 may direct that the warranted items be acquired in the name of the State  
1045 as purchaser.

1046

1047 (4) If a defect is discovered during a guarantee period, all repairs and  
 1048 corrections to the defective items when corrected shall be guaranteed for  
 1049 a new duration equal to the original full guarantee period. The running  
 1050 of the guarantee period shall be suspended for all other work affected by  
 1051 any defect. The guarantee period for all other work affected by any such  
 1052 defect shall restart for its remaining duration upon confirmation by the  
 1053 Engineer that the deficiencies have been repaired or remedied.

1054  
 1055 (5) Nothing in this section is intended to limit or affect the State's rights  
 1056 and remedies arising from the discovery of latent defects in the work after  
 1057 the expiration of any guarantee period.

1058  
 1059 **108.18 No Waiver of Legal Rights.** The following will not operate or be  
 1060 considered as a waiver of any portion of the contract, or any power herein  
 1061 reserved, or any right to damages provided herein or by law:

1062  
 1063 (1) Any payment for, or acceptance of, the whole or any part of the  
 1064 work.

1065  
 1066 (2) Any extension of time.

1067  
 1068 (3) Any possession taken by the Engineer.

1069  
 1070 A waiver of any notice requirement or of any noncompliance with the  
 1071 contract will not be held to be a waiver of any other notice requirement or any  
 1072 other noncompliance with the contract.

1073  
 1074 **108.19 Final Settlement of Contract.**

1075  
 1076 (A) **Closing Requirements.** The contract will be considered settled  
 1077 after the project acceptance date and when the following items have been  
 1078 satisfactorily submitted, where applicable:

1079  
 1080 (1) All written guarantees required by the contract.

1081  
 1082 (2) Complete and certified weekly payrolls for the Contractor  
 1083 and its subcontractor's.

1084  
 1085 (3) Certificate of plumbing and electrical inspection.

1086  
 1087 (4) Certificate of building occupancy.

1088  
 1089 (5) Certificate for soil treatment and wood treatment.

1090  
 1091 (6) Certificate of water system chlorination.

1092  
 1093 (7) Certificate of elevator inspection, boiler and pressure pipe  
 1094 installation.

**108.19**

1095  
1096  
1097  
1098  
1099  
1100  
1101  
1102  
1103  
1104  
1105  
1106  
1107  
1108  
1109

(8) Tax clearance.

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

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

**END OF SECTION 108**