107.13 Pollution Control and Protection Of Archeological, Historical, and Burial Sites.

(A) Erosion, Siltation and Pollution Control. The Contractor shall exercise precaution to prevent silting and pollution of oceans, rivers, streams, lakes, and reservoirs and other bodies and conveyances of water.

The Contractor shall provide for pollution and erosion control during the work including periods of suspension of contract performance. If material begins to erode, the Contractor shall act immediately to bring the siltation, erosion, and pollution under control. See Section 209 – Temporary Water Pollution, Dust and Erosion Control.

Follow guidelines in the City and County of Honolulu’s “Best Management Practices Manual for Construction Sites in Honolulu”, in developing, installing, and maintaining BMPs for all projects. Follow City and County of Honolulu’s “Rules for Soil Erosion Standards and Guidelines” for all projects on Oahu. Use appropriate Soil Erosion Guidelines for Maui, Kauai, and Hawaii projects.

(B) Archaeological, Historical, and Burial Sites. Whenever the Contractor encounters sites of potentially historic or archaeological significance such as walls, platforms, pavements and mounds, or remains such as artifacts, burials, concentration of charcoal or shells, work shall cease in the immediate vicinity of the site and the site shall be protected from damage. The Contractor shall suspend any work that may affect the site and inform the Engineer immediately. Upon direction by the Engineer, the Contractor shall provide and install temporary fencing to protect such sites. The Contractor shall not resume the work suspended without the prior written direction of and subject to the conditions set by the Engineer.
(2) The date of the completion of punchlist as determined by the Engineer and the date of the successful final inspection, and

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

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

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

108.10 Suspension of Work.

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

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

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

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

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

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

(b) Carry out orders given by the Engineer.
(c) Perform the work in strict compliance with the provisions of the contract.

(d) Provide adequate supervision on the jobsite.

(5) The convenience of the State.

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

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

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

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

(1) For weather related conditions.

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

(3) Or, for which an adjustment is provided for or excluded under any other provision of this Contract.
108.10

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

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

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

108.11 Termination of Contract for Cause.

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

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

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

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

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

108.12 Termination For Convenience.

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

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

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

(1) Any completed work.
(2) Refer the matter to the Contractor Licensing Board for appropriate action.

(3) Initiate a petition for debarment.

The State may withhold from future progress payments amounts to cover any sums paid to the Contractor for work performed by a subcontractor if the State finds that the subcontractor's complaint regarding non-payment by the Contractor has merit.

109.10 Withholding of Payment for Unsatisfactory Progress. If the Contractor is progressing or performing the work unsatisfactorily, the Engineer, upon written notice to the Contractor, may withhold sums not exceeding 5 percent of the total contract price from subsequent progress payments.

The Engineer may deduct from any amounts due to the Contractor sums assessed as liquidated damages as well as any other charges against the Contractor allowed by law or the contract documents.

If the Contractor refuses or fails to comply with the equal employment opportunity, affirmative action, non-discrimination, labor compliance, training, implementing and maintaining satisfactorily the BMP and NPDES standards and disadvantaged business enterprise requirements, the Engineer at its sole discretion and upon written notice to the Contractor may withhold any or all of the monthly progress payments that are due or to become due.

With the approval of the State, the Contractor may withdraw from time to time the whole or any portion of the sum withheld after endorsing over to the State and depositing with the State any general obligation bond of the State or its political subdivisions suitable to the State. But in no case will the bond have a face value less than the value of the amount to be withdrawn. The State may sell the bond and use monies directly withheld from progress payments or the final payment.

109.11 Final Payment. The Engineer will prepare the final estimate when the State accepts the project in accordance with Subsection 108.14 – Final Acceptance. Prior progress estimates and payments shall be subject to correction in the final estimate and payment.

Upon final settlement, the State will pay the entire sum due less all previous payments and less any sums that may have been or may be deducted in accordance with the provisions of the contract upon receipt of the following documents in a format acceptable to the Engineer:

(1) Consent of the surety to payment of the final estimate and certificate of release from the surety.
Amend Section 639 – Water Pollution Control to read as follows:

"SECTION 209 - TEMPORARY WATER POLLUTION, DUST, AND EROSION CONTROL"

209.01 Description. This section describes the following:

(A) Including detailed plans, diagrams, and written site-specific best management practices (BMP); constructing, maintaining, and repairing temporary water pollution, dust, and erosion control measures at the project site, including local material sources, work areas and haul roads; removing and disposing hazardous wastes; control of fugitive dust (defined as uncontrolled emission of solid airborne particulate matter from any source other than combustion); and complying with applicable State and Federal permit conditions.

(B) Work associated with dewatering activities and complying with conditions of the National Pollutant Discharge Elimination System (NPDES) general permit coverage authorizing discharges associated with construction activity dewatering.

Requirements of this section also apply to borrow pit operations, haul roads and Contractor’s storage sites located outside State Right-of-Way.

209.02 Materials. Materials shall conform to the following:

(A) Slope Drains. Slope drains may be constructed of pipe, fiber, mats, erosion control fabric, geotextiles, rubble, portland cement concrete, bituminous concrete, plastic sheets, or other materials acceptable to Engineer.

(B) Mulches. Mulches shall be recycled materials include bagasse, hay, straw, wood cellulose, bark, wood chips, or other materials acceptable to Engineer. Mulches shall be clean and free of noxious weeds and deleterious materials.

(C) Grass. Grass shall be a quick growing species such as rye grass, Italian rye grass, or cereal grasses. Grass shall be suitable to the area and provide a temporary cover that will not compete later with permanent cover. Alternative grasses are allowable if acceptable to Engineer.

(D) Fertilizer and Soil Conditioners. Fertilizer and soil conditioners shall be a standard commercial grade acceptable to the Engineer. Fertilizer shall conform to Subsection 712.18(A) - Commercial Fertilizer.

(E) Hydro-mulching. Hydro-mulching used as a BMP shall consist of materials in Subsections 209.02(B) - Mulches, 209.02(C) - Grass, and
209.02(D) – Fertilizer and Soil conditioners, with potable water meeting the requirements of Subsection 712.01 - Water. Installation and other requirements shall be in accordance with portions of Section 641- Hydro-Mulch Seeding.

(F) Silt Fences. Silt fences shall be synthetic filter fabric mounted on posts and embedded in compacted ground in accordance with contract documents, and shall be in compliance with ASTM D6462, Standard Practice for Silt Fence Installation. Silt fence posts shall be spaced a maximum of 6 feet apart.

(G) Berms. Berms shall be gravel or sand wrapped with geotextile material. Alternate materials are allowable if acceptable to Engineer.

Alternative materials or methods to control, prevent, remove and dispose pollution are allowable if acceptable to Engineer.

209.03 Construction.

(A) Preconstruction Requirements.

(1) Water Pollution, Dust, and Erosion Control Meeting. Submit site specific BMP to Engineer. Schedule a water pollution, dust, and erosion control meeting with Engineer after site specific BMP is accepted in writing by Engineer. Meeting shall be scheduled 14 days before start of construction work. Discuss sequence of work, plans and proposals for water pollution, dust, and erosion control.

(2) Water Pollution, Dust, and Erosion Control Submittals. Submit the following:

(a) Written site-specific BMP describing activities to minimize water pollution and soil erosion into State waters, drainage or sewer systems. BMP shall include the following:

1. An identification of potential pollutants and their sources.

2. A list of all materials and heavy equipment to be used during construction.

3. Descriptions of the methods and devices used to minimize the discharge of pollutants into State waters, drainage or sewer systems.

4. Details of the procedures used for the
maintenance and subsequent removal of any erosion or siltation control devices.

5. Methods of removing and disposing hazardous wastes encountered or generated during construction.

6. Methods of removing and disposing concrete and asphalt pavement cutting slurry, concrete curing water, and hydrodemolition water.

7. Spill control.

8. Fugitive dust control, including dust from grinding, sweeping, or brooming off operations or combination thereof.

9. Methods of storing and handling of oils, paints and other products used for the project.

10. Material storage and handling areas, and other staging areas.

11. Concrete truck washouts.

12. Concrete waste control.

13. Fueling and maintenance of vehicles and other equipment.

14. Tracking of sediment offsite from project entries and exits.

15. Litter management.

16. Toilet facilities.

17. Other factors that may cause water pollution, dust and erosion control.

(b) Provide plans indicating location of water pollution, dust and erosion control devices; provide plans and details of BMPs to be installed or utilized; show areas of soil disturbance in cut and fill, indicate areas used for storage of aggregate (indicate type of aggregate), asphalt cold mix, soil or waste, and show areas where vegetative practices are to be implemented. Indicate intended drainage pattern on plans. Include separate drawing for each phase of construction that
alters drainage patterns. Indicate approximate date when
device will be installed and removed.

(c) Construction schedule.

(d) Name(s) of specific individual(s) designated responsible
for water pollution, dust, and erosion controls on the project
site. Include home and business telephone numbers, fax
numbers, and e-mail addresses.

(e) Description of fill material to be used.

Date and sign BMP. Keep accepted copy on site
throughout duration of the project. Revisions to the BMP
shall be included with original BMP. Modify contract
documents to conform to revisions. Include actual date of
installation and removal of BMP. Obtain written acceptance
by Engineer before revising BMP.

Follow guidelines in the “Best Management Practices
Manual for Construction Sites in Honolulu”, in developing,
installing, and maintaining BMPs for all projects. Follow
Honolulu’s City and County “Rules for Soil Erosion Standards
and Guidelines” for all projects on Oahu. Use respective Soil
Erosion Guidelines for Maui, Kauai, and Hawaii projects.

(B) Construction Requirements. Do not begin work until submittals
detailed in Subsection 209.03(A)(2) - Water Pollution, Dust, and Erosion
Control Submittals are completed and accepted in writing by Engineer.

Install, maintain, monitor, repair and replace site-specific BMP
measures, such as for water pollution, dust and erosion control; installation,
monitoring, and operation of hydrotesting activities; removal and disposal of
hazardous waste indicated on plans, concrete cutting slurry, concrete curing
water; or hydrodemolition water.

Furnish, install rain gage in a secure location for projects that require
NPDES permit from the Department of Health prior to field work including
installation of site-specific BMP. Provide rain gage with a tolerance of at
least 0.05 inches of rainfall, and an opening of at least 1-inch diameter.
Install rain gage on project site in an area that will not deter rainfall from
entering the gate opening. Maintain rain gage and replace rain gage that is
stolen, does not function properly or accurately, is worn out, or needs to be
relocated. Do not begin field work until rain gauge is installed and site
specific BMPs are in place.

Address all comments received from Engineer.
Modify and resubmit plans and construction schedules to correct conditions that develop during construction which were unforeseen during the design and pre-construction stages.

Coordinate temporary control provisions with permanent control features throughout the construction and post-construction period.

Limit maximum surface area of earth material exposed at any time to 300,000 square feet. Do not expose or disturb surface area of earth material (including clearing and grubbing) until BMP measures are installed and accepted in writing by Engineer. Protect temporarily or permanently disturbed soil surface from rainfall impact, runoff and wind before end of workday.

Protect exposed or disturbed surface area with mulches, grass seeds or hydromulch. Spray mulches at a rate of 2,000 pounds per acre. Add tackifier to mix at a rate of 85 pounds per acre. Apply grass seeds at a rate of 125 pounds per acre. For hydromulch use the ingredients and rates required for mulches and grass seeds.

Apply fertilizer to mulches, grass seed or hydromulch at a rate of 450 pounds per acre. Apply an additional 250 pounds per acre every 90 calendar days.

Install velocity dissipation measures when exposing erodible surfaces greater than 15 feet in height.

BMP measures shall be in place and operational (such as shaping the earthwork to control and directing the runoff) at the end of workday. Shaping earthwork may include constructing earth berms along the top edges of embankments if acceptable to Engineer.

Install and maintain either or both stabilized construction entrances and wheel washes to minimize tracking of dirt and mud onto roadways. Restrict traffic to stabilized construction areas only. Clean dirt, mud, or other material tracked onto the road immediately. Modify stabilized construction entrances to prevent mud from being tracked onto road. Stabilize entire access roads if necessary.

Chemicals may be used as soil stabilizers for either or both erosion and dust control if acceptable to Engineer.

Provide temporary slope drains of rigid or flexible conduits to carry runoff from cuts and embankments. Provide portable flume at the entrance. Shorten or extend temporary slope drains to ensure proper function.
Protect ditches, channels, and other drainageways leading away from cuts and fills at all times by either:

1. Hydro-mulching the lower region of embankments in the immediate area.

2. Placing an 8- to 15-inch layer of excavated rock, if available on-site, without reducing the cross section of the drainageway. Rocks shall be less than 4 inches in diameter.

3. Installing check dams and salutation control devices.

4. Other methods acceptable to Engineer.

Provide for controlled discharge of waters impounded, directed, or controlled by project activities or erosion control measures.

Cover exposed surface of materials completely with tarpaulin or similar device when transporting aggregate, soil, excavated material or material that may be source of fugitive dust.

Cleanup and remove any pollutant that can be attributed to Contractor.

Install or modify BMP measures due to change in Contractor’s means and methods, or for omitted condition that should have been allowed for in the accepted site specific BMP or a BMP that replaces an accepted site specific BMP that is not satisfactorily performing.

Properly maintain all BMP features. Inspect, prepare a written report, and make repairs to BMP measures at following intervals:

1. Weekly during dry periods.

2. Within 24 hours of any rainfall of 0.5 inch or greater which occurs in a 24-hour period.

3. Daily during periods of prolonged rainfall.

4. When existing erosion control measures are damaged or not operating properly as required by site specific BMP.

Remove, destroy, replace or relocate any BMP that must be removed, destroyed, replaced or relocated due to potential or actual flooding, or potential danger or damage to project or public.

Maintain records of inspections of BMP work. Keep continuous

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records for duration of the project. Submit weekly copy of records to Engineer.

In addition to weekly reports, submit to Engineer all amounts spent initializing and maintaining BMP during previous week. Amount spent includes, but is not limited to: purchases of erosion control material, construction of storage areas, and installation of water pollution, erosion and dust control measures. Submit report weekly along with site inspection report.

Protect finished and previously seeded areas from damage and from spillover materials placed in upper lifts of embankment.

The Contractor's designated representative specified in Subsection 209.03(A)(2)(d) shall address any BMP concerns brought up by Engineer within 24 hours of notification, including weekends and holidays. Failure to satisfactorily address these concerns, Engineer reserves the right to employ outside assistance or use Engineer's own labor forces to provide necessary corrective measures. Engineer will charge Contractor such incurred costs plus any associated project engineering costs. Engineer will make appropriate deductions from Contractor's monthly progress estimate. Failure to apply BMP measures shall result in either or both the establishment and increase in the amount of retainage due to unsatisfactory progress or withholding of monthly progress payment. Continued failure to apply BMP measures may result in one or more of the following: assessment of liquidated damages, suspension, or cancellation of contract with Contractor being fully responsible for all additional costs incurred by State.

(C) Hydrotesting Activities. If work includes removing, relocation or installing waterlines, and Contractor elects to flush waterline or discharge hydrotecting effluent into State waters or drainage systems, obtain an NPDES Hydrotesting Waters Permit from Department of Health, Clean Water Branch (DOH-CWB).

Do not begin hydrotesting activities until the DOH-CWB has issued a Notice of General Permit Coverage (NGPC). Hydrotesting operations shall be in accordance with conditions in NGPC. Submit a copy of the NPDES Hydrotesting Waters Application and Permit to Engineer.

(D) Dewatering Activities. If excavation of backfilling operations require dewatering, and Contractor elects to discharge dewatering effluent into State waters or existing drainage systems, obtain NPDES General Permit Coverage authorizing discharges associated with construction activity dewatering from Department of Health, Clean Water Branch (DOH-CWB). If permit is required, prepare and submit permit application (CWB-NOI Form G) to DOH-CWB.
Do not begin dewatering activities until DOH-CWB has issued Notice of General Permit Coverage (NGPC). Conduct dewatering operations in accordance with conditions in NGPC. Submit copy of NPDES Hydrotesting Waters Application and Permit to Engineer.

209.04 Measurement.

(A) Installation, maintenance, monitoring, and removal of BMP will be paid on a lump sum basis. Measurement for payment will not apply.

(B) Engineer will only measure additional water pollution, dust and erosion control required and requested by Engineer on a force account basis in accordance with Subsection 109.04 –Force Account Provisions and Compensation.

209.05 Payment. Engineer will pay for accepted pay items listed below at contract price per pay unit, as shown in the proposal schedule. Payment will be full compensation for work prescribed in this section and contract documents.

The Engineer will pay for each of the following pay items when included in proposal schedule:

<table>
<thead>
<tr>
<th>Pay Item</th>
<th>Pay Unit</th>
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</thead>
<tbody>
<tr>
<td>Installation, Maintenance, Monitoring, and Removal of BMP</td>
<td>Lump Sum</td>
</tr>
<tr>
<td>Additional Water Pollution, Dust, and Erosion Control</td>
<td>Force Account</td>
</tr>
</tbody>
</table>

An estimated amount for force account is allocated in proposal schedule under ‘Additional Water Pollution, Dust, and Erosion Control’, but actual amount to be paid will be the sum shown on accepted force account records, whether this sum be more or less than estimated amount allocated in proposal schedule. Engineer will pay for BMP measures requested by Engineer that are beyond scope of accepted site specific BMP and for litter management due to rubbish created by the public on a force account basis.

No progress payment will be authorized until Engineer accepts in writing site-specific BMP or when Contractor fails to maintain project site in accordance with accepted BMP.

For all citations or fines received by the Department for non-compliance with Notice of General Permit Coverage (NGPC), the Contractor shall reimburse State within 30 days for full amount of outstanding cost State has incurred, or Engineer will deduct cost from progress payment.

Engineer will assess liquidated damages up to $27,500 per day for non-compliance of each BMP requirement and all other requirements in this section.”
END OF SECTION 209