

SECTION 107
LEGAL RELATIONS AND
RESPONSIBILITY TO PUBLIC

107.01 Laws to be Observed. The Contractor shall keep fully informed and comply with all Federal, State and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which may affect those engaged or employed on the work, or affect the conduct of the work. The Contractor shall protect and indemnify the Department and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by the Contractor, the subcontractors, suppliers of materials or services, or their employees.

107.02 Permits, Licenses, and Taxes. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Contract.

Prior to beginning work the Contractor shall furnish the Engineer a written list of all permits required for the proper completion of the Contract. The list shall clearly identify the type of permit or permits that must be obtained before work on any particular phase or phases of work can be started. Copies of the fully executed permits shall be furnished to the Engineer upon request.

Publicly owned vehicles and Contractor's vehicles operating within the confines of the project are exempted from the payment of ton-mile taxes under Section 42-3-127, CRS. The confines of the project as exempted under Section 42-3-127, CRS are defined as including all sources of earthen or mineral aggregates and water for use on the project, and the connecting roads or areas between the project and such sources.

107.03 Patented Devices, Materials, and Processes. If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for their use by suitable legal agreement with the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the Department, any affected third party, or political sub-division from any and all claims for infringement resulting from the use of any patented design, device, material or process, or any trademark or copyright, and shall indemnify the Department for any costs, expenses, and damages which they may be obliged to pay by reason of any infringement, during the prosecution or after the completion of the Contract.

107.04 Restoration of Surfaces Opened by Permit. An individual, firm, or corporation may be issued a permit to construct or reconstruct a utility service. The Contractor shall allow permit holders to perform permitted work. The Contractor shall make necessary repairs resulting from this work, as directed. The repairs will be paid for as extra work in accordance with subsection 109.04.

107.04

The repairs will be subject to the same requirements as the original work performed.

107.05 Federal Aid Provisions. When the United States Government participates in the cost of a project, the Federal laws and the rules and regulations made pursuant to such laws must be observed by the Contractor, and the work shall be subject to the inspection of the appropriate Federal agency.

Such inspection shall not make the United States Government a party to the Contract and shall not interfere with the rights of the parties to the Contract.

107.06 Sanitary, Health, and Safety Provisions. The Contractor shall observe all rules and regulations of Federal, State and local health officials. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to health or safety.

107.07 Public Convenience and Safety. The Contractor shall conduct the work to minimize obstruction to traffic. The safety and convenience of the general public and the residents along the highway and the protection of persons and property shall be provided for by the Contractor as specified under subsection 104.04.

107.08 Railroad-Highway Provisions. If the Contract requires materials to be hauled across railroad tracks, the Department will make arrangements with the railroad company for any new crossings required or for the use of any existing crossings. The Contractor shall make arrangements for the use of crossings not provided in the Contract.

Work performed by the Contractor on the railroad right of way shall be performed to avoid interference with the movement of trains or traffic on the railroad tracks. The Contractor shall use care and precaution in order to avoid accidents, damage, or unnecessary delay or interference with the railroad company's trains or property.

107.09 Construction Over and Adjacent to Navigable Waters. Work on navigable waters shall be conducted to avoid interference with free navigation of the waterways and so the existing navigable depths will not be impaired except as allowed by permit issued by the U.S. Coast Guard or the U.S. Army Corps of Engineers, as applicable.

107.10 Barricades and Signs. The Contractor shall provide, erect, and maintain barricades, suitable and sufficient lights, pavement markings, signs, and other traffic control devices, and shall protect the work and safety of the public in accordance with the Contract. Highways closed to traffic shall be protected by barricades, and obstructions shall be illuminated during hours of darkness. Signs shall be provided to control and direct traffic.

The Contractor shall erect signs at locations where operations may interfere with the use of the road by traffic, and at all intermediate points where the new work crosses or coincides with an existing road, bikepath, or sidewalk. Signs shall be constructed, erected, and maintained in accordance with the Contract.

Barricades, warning signs, lights, temporary signals, and other protective devices shall conform with the latest revision of the "Manual on Uniform Traffic Control Devices for Streets and Highways" published by the FHWA and adopted by the Department, the latest revision of the Colorado Supplement thereto, and the required traffic control plan.

107.11 Use of Explosives. When explosives are utilized in the prosecution of the work, the Contractor shall not endanger life, property, or new work. The Contractor shall be responsible for all damage resulting from the use of explosives.

The Contractor's explosives shall be stored in a secure manner in compliance with laws and ordinances, and storage places shall be clearly marked. When electric blasting caps are used, stored or moved in the vicinity of the work, warning signs prohibiting the use of radio transmitters and mobile telephones shall be posted on all roads within 350 feet of the blasting operation.

The Contractor shall notify property owners and public utility companies having structures in the proximity of the work of the intention to use explosives. Notice shall be given sufficiently in advance to enable them to protect their property.

In advance of doing any blasting work involving the use of electric blasting caps within 200 feet of any railroad's track or structures, the Contractor shall notify the proper authority of the railroad company as to the location, date, time and approximate duration of such blasting operations.

At the conclusion of each day of blasting, all spent surface blasting components shall be removed. At the conclusion of blasting and excavation work, the Contractor shall properly dispose of all spent blasting components. At the completion of final grading, the Contractor shall inspect the project and remove all exposed blasting components.

107.12 Protection and Restoration of Property and Landscape. The Contractor shall preserve private and public property and protect it from damage. Land monuments and property marks shall not be disturbed or moved until their location has been witnessed or referenced in accordance with Section 629 and their removal approved.

The Contractor shall be responsible for the damage or injury to property resulting from:

- (1) the Contractor's neglect, misconduct, or omission in the manner or method of execution or nonexecution of the work, or
- (2) the Contractor's defective work or the use of unacceptable materials.

The Contractor's responsibility shall not be released until the work has been completed in compliance with the Contract. The Contractor shall restore damaged or injured property, at the Contractor's expense, to a condition similar or equal to that existing before the damage or injury occurred, by repairing, rebuilding, or restoring the property.

107.12

Existing trees, shrubs, bushes or grass, outside the designated work areas but inside project limits, that are damaged due to the Contractor's operations shall be replaced in kind at the Contractor's expense.

107.13 Forest Protection. The Contractor shall comply with all regulations of the State Department of Natural Resources, the National Forest Supervisor, or other authority having jurisdiction, governing the protection of forests, and shall observe all sanitary laws and regulations with respect to the performance of work within or adjacent to state or National Forests. The Contractor shall keep the areas in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the regulations and instructions issued by the Forest Supervisor.

The Contractor shall take all reasonable precaution to prevent forest fires, and shall make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire seen by them. The Contractor, subcontractors, and their employees shall prevent and suppress forest fires and provide assistance in this effort as directed by forest officials.

107.14 Interruption of Irrigation Water Flow. The Contractor shall arrange the work to avoid interference with the flow of irrigation water. If it is impractical to install the structure during the time the ditches are not flowing, the Contractor shall make arrangements with the ditch owners regarding temporary interruption of flow or temporary diversion of water. This will require construction of new ditches with appurtenant structures before old ditches or canals are altered. The Contractor shall provide any temporary ditches, canals or structures necessary for the uninterrupted flow of irrigation water. Temporary construction and removal shall be at the expense of the Contractor.

107.15 Responsibility for Damage Claims. The Contractor shall indemnify and save harmless the Department, its officers, and employees, from suits, actions, or claims of any type or character brought because of any and all injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or failure to comply with the provisions of the Contract; or on account of or in consequence of neglect of the Contractor in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of the Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright, unless the design, device, material or process involved is specifically required by the Contract; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or other law, ordinance, order, or decree. The Department may retain as much of any moneys due the Contractor under any Contract as may be determined by the Department to be in the public interest.

The Contractor shall procure and maintain, until final acceptance of the project, liability insurance for damages imposed by law, of the kinds and in the amounts specified, with insurance companies authorized to do business in the State of Colorado. The insurance shall cover all operations under the Contract, whether performed by the Contractor or by subcontractors. Before commencing the work, the Contractor shall furnish certificates of insurance in the form satisfactory to the Department certifying that the policies are in full force and effect and shall not be changed or canceled until 30 days after written notice thereof has been received by the Department. In the event such notice of change or cancellation is received by the Department, the Contractor, within 20 days of such receipt, shall submit a substitute policy which meets all of the requirements of the Contract. Such substitute policy must be effective no less than 48 hours prior to the date of the change or cancellation.

The types and coverage limits of insurance are as follows:

- (1) Workers' Compensation Insurance and employee liability in accordance with current State Statutes. Employer's Liability Insurance at a minimum of \$500,000 each accident, and \$500,000 each disease.
- (2) Commercial General Liability at a minimum of \$1,000,000 Each Occurrence; \$1,000,000 Personal Injury; \$2,000,000 Products/Completed Operations; \$2,000,000 General Aggregate. The Policy shall be endorsed for Annual Aggregate and be written on an Occurrence form. CDOT shall be endorsed as an Additional Insured by the Contractor and by all Subcontractors. Completed Operations coverage shall be provided for a minimum period of one year following final acceptance of work.
- (3) Commercial Automobile Liability shall cover all owned, non-owned, and hired vehicles with a minimum of \$1,000,000 combined single limit bodily injury and property damage. The Policy shall protect CDOT as an Additional Insured and be written on an Occurrence form.
- (4) Professional Liability Insurance (Errors & Omissions Insurance for Surveyors, Engineers or Architects). The Contractor shall procure and maintain, or shall ensure that all subcontractors meeting the following contract elements procure and maintain a minimum of \$1,000,000 Each Occurrence and \$1,000,000 Annual Aggregate when:
 - (1) Contract items 625, 629, or both are included in the Contract
 - (2) Plans, specifications, and submittals are required to be signed and sealed by the Contractor's Professional Engineer, including but not limited to:
 - (i) Shop drawings and working drawings as described in subsection 105.02
 - (ii) Mix Designs
 - (iii) Contractor performed design work as required by the plans and specifications
 - (iv) Change Orders

107.15

(v) Approved Value Engineering Change Proposals

The Contractor and any included subcontractor shall renew and maintain Professional Liability Insurance as outlined above for a minimum of one year following final acceptance of work.

- (5) Umbrella or Excess Liability at a minimum of \$1,000,000. This policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted. The Policy shall be written on an Occurrence form.

When the Contractor requires a subcontractor to obtain insurance coverage, the types and minimum limits of this coverage may be different than those required, as stated above, for the Contractor, except for the Commercial General Liability Additional Insured endorsement and those that qualify as needing Professional Liability Insurance.

107.16 Opening Sections of Project to Traffic. Opening certain sections of the work for traffic use shall not constitute acceptance of the work, or provide a waiver of any provision of the Contract.

The Contract will designate the sections to be opened and specify the method of compensation for signing and traffic control. The Contractor shall maintain the roadway in a condition equal to or better than the condition of the roadway when it was initially opened to traffic. Where applicable, the Contract may specify the time or date on which certain portions of the work shall be completed to provide for the accommodation of traffic.

The Engineer may order certain portions of the work opened for traffic, other than specified in the Contract. If the Engineer has not ordered the roadway opened because of unnecessary delay by the Contractor, and if no damage occurs other than that which can be attributed to traffic, the Contractor will be relieved of all responsibility for maintenance of traffic control devices and damage due to traffic. Any expense resulting from opening such sections shall be borne by the Department or the Contractor will be compensated for the added expense in accordance with subsection 109.04. If the opening causes changed working conditions, or delays the completion of other items of work on the project, compensation for the added expense and recommendations for additional time will be set forth by a Contract Modification Order.

If the Contractor is dilatory in completing the work, the Engineer may order all or a portion of the project to be opened to traffic. In such event, the Contractor will not be relieved of the liability and responsibility during the period the work is so opened prior to final acceptance. The Contractor shall conduct the remainder of the construction operations to cause the least obstruction to or interference with traffic. Damage attributed to traffic shall be paid for at the Contractor's expense.

Damages not attributable to traffic which might occur on sections opened to traffic shall be repaired at the Contractor's expense. The removal of slides that are not caused by the Contractor's operations shall be done by the Contractor on a basis agreed to prior to the slide removal.

107.17 Contractor's Responsibility for Work. The Contractor shall be responsible for and protect the contract work against injury or damage from all causes whether arising from the execution or nonexecution of the work, including but not limited to action of the elements, traffic, fire, theft, vandalism, or third party negligence, until final written acceptance of the project by the Engineer. The Contractor shall rebuild, repair, restore, or replace all contract work that is injured or damaged prior to final written acceptance at no cost to the Department.

The Engineer may, in writing, relieve the Contractor of expenses for damage to certain portions of the contract work caused by traffic or the action of the elements. The following conditions must be met before the Engineer will consider any relief:

- (1) All work on the portion of contract work being considered must be complete under terms of the Contract except for seeding, mulching, landscape items, final clean-up, and bridge painting or structural coating.
- (2) Traffic shall be in its final configuration and location.

Portions of contract work that may be considered are described below:

- (1) A minimum of 0.5 mile of roadway, or a minimum of 0.5 mile of one direction of a divided highway.
- (2) A complete bridge. This includes all approach roadway safety features that protect traffic from such items as: bridge railing and median barrier ends, piers, and abutments.
- (3) A complete intersection traffic signal system.
- (4) A complete highway lighting system.

Loss, injury, or damage to the contract work due to unforeseeable causes beyond the control of the Contractor, including but not limited to acts of God, such as earthquake, flood, tornado, high winds, or other cataclysmic phenomenon of nature, or acts of the public enemy or of governmental authorities, shall be restored by the Contractor under the provisions of subsection 104.02 or 104.03, as applicable.

During periods that work is suspended, the Contractor shall be responsible for the work under the Contract and shall prevent damage to the project, provide for drainage, and shall erect necessary temporary structures, signs, or other facilities required to maintain the project. During the suspension period, the Contractor shall maintain in a growing condition all newly established plantings, seedings, and soddings furnished

107.17

under the Contract, and shall protect new tree growth and other vegetative growth against injury.

107.18 (unused)

107.19 Furnishing Right of Way. The Department will be responsible for the securing of all necessary rights of way in advance of construction. Any exceptions will be indicated in the Contract.

107.20 Personal Liability of Public Employees. The Engineer or authorized representatives are acting solely as agents and representatives of the Department when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of the Department.

107.21 No Waiver of Legal Rights. Upon completion of the Contract, the Department will make final inspection and notify the Contractor of acceptance. Final acceptance shall not preclude the Department from correcting any measurement, estimate, or certificate made before or after completion of the Contract, nor from recovering from the Contractor or surety or both, overpayments sustained because the Contractor failed to fulfill the obligations under the Contract. A waiver on the part of the Department of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor without prejudice to the terms of the Contract, shall be liable to the Department, for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Department's rights under any warranty or guaranty.

107.22 Third Party Beneficiary. It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof a third party beneficiary hereunder, or to authorize any one not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract. The duties, obligations and responsibilities of the parties to this Contract with respect to third parties shall remain as imposed by law.

107.23 Archaeological and Paleontological Discoveries. When the Contractor's operations, including materials pits and quarries, encounter plant or animal fossils, remains of prehistoric or historic structures, prehistoric or historic artifacts (bottle dumps, charcoal from subsurface hearths, old pottery, potsherds, stone tools, arrowheads, etc.), the Contractor's affected operations shall immediately cease. The Contractor shall immediately notify the Engineer, or other appropriate agency for contractor source pits or quarries, of the discovery of these materials. When ordered to proceed, the Contractor shall conduct affected operations as directed. Additional work, except that in contractor source materials pits or quarries under subsection 106.02(b), will be paid for by the Department as provided in subsection 104.02 when contract unit prices exist, or as extra work as provided in subsection 104.03 when no

unit prices exist. Delays to the Contractor, not associated with work in contractor sources, because of the materials encountered may be cause for extension of contract time in accordance with subsection 108.07. If fossils, prehistoric or historic structures, or prehistoric or historic artifacts are encountered in a contractor source materials pit or quarry, all costs and time delays shall be the responsibility of the Contractor.

107.24 Air Quality Control. The Contractor shall comply with the “Colorado Air Quality Control Act,” Title 25, Article 7, CRS and regulations promulgated thereunder.

107.25 Water Quality Control. The project work shall be performed using practices that minimize water pollution during construction. All the practices listed in (b) below shall be followed to minimize the pollution of any state waters, including wetlands.

(a) *Definitions.*

1. *Pollutant.* Dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal, or agricultural waste. [25-8-103 (15), CRS]
2. *Pollution.* Man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water. [25-8-103 (16), CRS]
3. *State Waters.* Based on 25-8-103 (19) CRS, state waters are defined to be any and all surface and subsurface waters which are contained in or flow through the state, including, streams, rivers, lakes, drainage ditches, storm drains, ground water, and wetlands, but not including waters in sewage systems, waters in treatment works or disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

(b) *Construction Requirements.*

1. The Contractor shall comply with the “Colorado Water Quality Control Act” (Title 25, Article 8, CRS), the “Protection of Fishing Streams” (Title 33, Article 5, CRS), the “Clean Water Act” (33 USC 1344), regulations promulgated, certifications or permits issued, and to the requirements listed below. In the event of conflicts between these requirements and water quality control laws, rules, or regulations of other Federal, or State agencies, the more restrictive laws, rules, or regulations shall apply.
2. If the Contractor anticipates, or if construction activities result in any change from or noncompliance with permits or certifications, then the

107.25

Contractor shall detail the anticipated changes or noncompliance in a written report to the Engineer, and revise existing permits or certifications or obtain new permits or certifications as necessary. The report shall be submitted within two days from the time the Contractor becomes aware of the change or noncompliance. Within five days after receipt of the report, the Engineer will approve or reject the request for change in writing, or detail a course of action.

3. The Contractor may be legally required to obtain permits associated with specific activities within, or off the right-of-way, such as borrow pits, concrete or asphalt plant sites, waste disposal sites, or other facilities. It is the Contractor's responsibility to obtain these permits. The Contractor shall consult with the Engineer, and contact the Colorado Department of Public Health and Environment or other appropriate federal, state, or local agency to determine the need for any permit.
4. The Contractor shall conduct the work in a manner that minimizes pollution of any adjacent waters, including wetlands. Erosion control work shall be performed in accordance with Section 208 and this subsection.
5. At least ten days prior to the beginning of construction, the Contractor shall submit to the Engineer a written report describing the location of potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, etc. The report shall include maps indicating areas that will be used for storage of building materials, soils, or wastes, and the location of any dedicated asphalt or concrete batch plants. The report shall also include a spill contingency plan for any petroleum product, chemicals, solvents, or other hazardous materials in use, or in storage, at the work site. Work shall not be started until the report, including the spill contingency plan, has been submitted to the Engineer.
6. Required dewatering of excavations shall be conducted in a manner that avoids pollution and erosion. Water from dewatering operations shall not be directly discharged into any state waters including wetlands, irrigation ditches, canals, or storm sewers, unless allowed by a permit. Discharge into sanitary sewers will not be allowed unless written permission is obtained from the owner or controlling authority and a copy of this approval submitted to the Engineer. Unless prohibited by law or otherwise specified in the Contract, the water from dewatering operations shall be contained in basins for dissipation by infiltration or evaporation, shall be hauled away from the project for disposal in accordance with applicable laws and regulations, or shall be land applied to approved non-wetland vegetated areas and allowed to soak into the soil. Depending upon the quality of the water, land application of water to vegetated areas may require a written concurrence or permit from the Colorado Department of Public Health and Environment (CDPHE). Based on guidelines and criteria from CDPHE, the Contractor shall determine the quality of the water,

obtain applicable concurrences or permits, and furnish copies of the concurrences or permits obtained to the Engineer.

7. At least 15 days prior to commencing dredging or fill operations in a watercourse, the Contractor shall provide written notification to owners or operators of domestic or public water supply intakes or diversion facilities, if these facilities are within 5 miles downstream from the dredging or fill operations.
8. Upon completion of wetland or in stream construction activities, all temporary fills shall be removed in their entirety and disposed of in an upland location outside of flood plains unless otherwise specified in the Contract. Affected areas shall be returned to their pre-existing elevation unless otherwise specified in the Contract.
9. Construction operations in state waters, including wetlands, shall be restricted to:
 - (1) Channel change areas designated in the Contract.
 - (2) Areas designated in the Contract which must be entered to construct structures.
 - (3) Forging waters no more than four times per day. Whenever forging waters more than four times per day is necessary, a temporary bridge or other structure shall be used.
 - (4) Areas authorized by the Corps of Engineers.
10. Work in, or near, wetlands shall be performed in a manner that will minimize harm to the wetlands. Wetland areas outside of the right-of-way shall not be used for storage, parking, waste disposal, access, borrow material, or any other construction support activity.
11. Pollutant by-products of highway construction, concrete, asphalt, solids, sludges, pollutants removed in the course of treatment of wastewater, excavation or excess fill material, and material from sediment traps shall be handled, stockpiled, and disposed of in a manner that prevents entry into state waters, including wetlands.

Removal of concrete waste and washout water from mixer trucks, concrete finishing tools, concrete saw and all concrete material removed in the course of construction operations or cleaning shall be performed in a manner that prevents waste material from entering state waters. A minimum of ten days prior to the start of concrete operations, the Contractor shall submit in writing a method for containing concrete wastewater to the Engineer for approval.

12. The use of chemicals such as soil stabilizers dust palliatives, herbicides, growth inhibitors, fertilizers, deicing salts, etc., during construction shall

107.25

be in accordance with the manufacturer's recommended application rates, frequency, and instructions. These chemicals shall not be used, stored, or stockpiled within 50 horizontal feet of the ordinary high water line of any state waters, including wetlands, except when otherwise specified in the Contract.

13. Construction waste or salvable material, excess excavated material, fill material, construction equipment, fuels, lubricants, and other petroleum distillates shall not be stored or stockpiled within 50 horizontal feet of any wetland, water impoundment area, or the ordinary high water line of any watercourse. Equipment fueling and servicing shall occur only within approved designated areas.
14. The quantity of materials stored on the project shall be limited, as much as practical, to that quantity required to perform the work in an orderly sequence. All materials stored on-site shall be stored in a neat, orderly manner, in their original containers, with the original manufacturer's label. Materials shall not be stored in a location where they may be carried into a state water at any time.
15. Spill prevention and containment measures shall be used at storage, and equipment fueling and servicing areas to prevent the pollution of any state waters, including wetlands. All spills shall be cleaned up immediately after discovery, or contained until appropriate cleanup methods can be employed. Manufacturer's recommended methods for spill cleanup shall be followed, along with proper disposal methods.
16. Use of heavy equipment in or around state waters, including wetlands, will not be allowed, except as specified in the Contract, permits, and subsection 107.25(b)10. above, unless otherwise directed by the Engineer. If any such work is allowed, the equipment shall be of such type that will produce minimal environmental damage. For allowed work in wetlands, the equipment shall be on fiber, wooden, earthen, or metallic mats to prevent undue disturbance and damage to the wetlands area. Where practical, equipment shall be operated from banks or shoulder above riparian and wetland areas.
17. The Contractor shall prevent grass or brush fires that will expose areas of soil to erosion.
18. The construction activity shall not block the movement of those species of aquatic life indigenous to the waterbody.
19. The construction activities shall not impair Indian tribal rights, including, but not limited to, water rights, and treaty fishing and hunting rights.

20. Discharges of pollutants into breeding areas of migratory waterfowl, or into fish spawning areas during spawning seasons shall not be permitted unless allowed by permits from appropriate regulatory agencies.

(c) *Measurement and Payment.*

1. All the work listed in (b) above, including but not limited to dewatering, erosion control for dewatering, and disposal of water resulting from dewatering operations, including all costs for CDPHE concurrences and permits, will not be measured and paid for separately, but shall be included in the work.
2. The Contractor shall be liable for any penalty (including monetary fines) applied to the Department caused by the Contractor's noncompliance with any water quality permit or certification. Monetary fines shall be deducted from any money due to the Contractor. If the monetary fine is in excess of all the money due to the Contractor, then the Contractor shall pay to the Department the amount of such excess.
3. The Contractor will not receive additional compensation, or time extensions, for any disruption of work or loss of time caused by any actions brought against the Contractor for failure to comply with water quality controls.
4. In the event that a spill occurs as a direct result of the Contractor's actions or negligence, the clean-up of such spill shall be performed by the Contractor at the Contractor's expense.
5. Areas exposed to erosion by fire resulting from the Contractor's operations shall be stabilized in accordance with Section 208 by the Contractor and at the Contractor's expense.

108.01

SECTION 108 PROSECUTION AND PROGRESS

108.01 Subletting of Contract. The Contractor shall not sublet, sell, transfer, assign, or dispose of the Contract or Contracts, or any portion thereof without written permission of the Engineer. Prior to beginning any work by subcontractor, the Contractor shall request permission from the Engineer by submitting a completed Sublet Permit Application, CDOT Form No. 205. The subcontract work shall not begin until the Contractor has received the Engineer's written permission. The Contractor shall make all project related written subcontracts available to the Engineer for viewing, upon request and at a location convenient to the Engineer.

The Contractor will be permitted to sublet a portion of the Contract, however, the Contractor's organization shall perform work amounting to 30 percent or more of the original total cost of bid items. Any items designated in the contract as "specialty items" may be performed by subcontract. The cost of "specialty items" so performed by subcontract may be deducted from the original total cost of bid items before computing the amount of work required to be performed by the Contractor's own organization.

The calculation of the percentage of subcontracted work shall be based on the prime contract unit prices rather than subcontract unit prices. Proportional value for a subcontracted partial contract item will be verified by the Engineer. For the purpose of calculating the value of subcontracted work, the cost of procuring materials and manufactured products can be included in either the prime contract or subcontract. However, when a firm both sells material to a prime contractor and performs the work of incorporating the materials into the project, these two phases shall be considered in combination and as constituting a single subcontract.

Subcontracts, or transfer of Contract shall not release the Contractor of liability under the Contract and bonds.

108.02 Notice to Proceed. The Contractor shall not commence work prior to the issuance of a Notice to Proceed. The "Notice to Proceed" will stipulate the date on which contract time commences. When the Contractor proceeds with work prior to that date, contract time will commence on the date work actually begins. The Contractor shall commence work under the Contract on or prior to the fifth day following Contract execution or the twentieth day following the date of award, whichever comes later, or in accordance with the selected start date allowed in the special provisions.

108.03 Schedule. The Contractor shall be responsible for planning, scheduling, and reporting the progress of the work to ensure timely completion of the work as called for in the Contract. The Contractor shall prepare a Project Schedule that shall be used for coordination, for evaluation of progress, and for the evaluation of changes to the Contract. The Schedule shall include all activities, including those of subcontractors,

Contractor's engineers and surveyors, and suppliers. Seasonal and weather constraints, utility coordination, railroad restrictions, right of way restrictions, traffic constraints, environmental constraints, other project interfaces, expected job learning curves and other constraints shall be considered when preparing the Project Schedule. Days scheduled as no work days shall be indicated. A CPM schedule will be required unless the Commencement and Completion of work special provision allows a bar chart schedule. The Schedule shall show all work completed within the contract time.

The Contractor shall submit two copies of all required schedule information as described below. All schedules, diagrams, and reports shall include a title, project number, date of preparation, and the name of the Contractor. For CPM schedules, all required schedules and reports shall also be submitted electronically on floppy disk or compact disk.

The Bar Chart or Initial Schedule shall be submitted at least 10 working days prior to the start of the work. The Engineer's review of the Schedule will not exceed two working days. Work shall not begin until the Schedule is accepted in writing, unless otherwise approved by the Engineer.

- (a) *Methods Statement.* A Methods Statement shall be prepared for the salient features listed in the Commencement and Completion of Work special provision, and for any feature not listed in the Commencement and Completion of Work special provision that the Contractor considers a controlling factor for timely completion. The Methods Statement shall be a detailed narrative describing each feature and all work necessary to complete the feature. The Methods Statement shall be submitted with the Contractor's schedule. The following format is required.
- (1) *Feature:* name of the feature;
 - (2) *Responsibility:* Contractor, subcontractor, supplier, utility, etc. responsible for the feature;
 - (3) *Procedures:* procedures to be used to complete the work. The procedure to be used shall include general information regarding methods such as forming, excavation, pouring, heating and curing, backfill and embankment, trenching, protecting the work, etc. When separate or different procedures are to be employed by the Contractor due to seasonal or project phasing requirements, such differing procedures shall be described in the procedure statement;
 - (4) *Production Rates:* the planned quantity of work per day for each feature;
 - (5) *Labor Force:* the labor force planned to do the work;
 - (6) *Equipment:* the number, types, and capacities of equipment planned to do the work;
 - (7) *Work Times:* the planned time for the work to include:
 - A. number of work days per week
 - B. number of shifts per day
 - C. number of hours per shift.

108.03

At the Engineer's request, the Contractor shall update the Methods Statement, or any part thereof, and submit it with the next monthly schedule update.

- (b) *Bar Chart.* The Bar Chart shall be time scaled and shall show the following:
- (1) The salient features, as listed in the Commencement and Completion of Work special provision.
 - (2) Any feature not listed in the Commencement and Completion of Work special provision that the Contractor considers a controlling factor for timely completion.
 - (3) The number of days required to complete each feature and its relationship in time to other features.
 - (4) Sufficient space for each feature to permit two additional plots parallel to the original time span plot.
 - (5) The anticipated delivery dates for equipment or materials in any feature that could affect timely completion of the project.
 - (6) Critical completion dates for any activity within any feature that could affect timely completion of the project.
 - (7) Connecting lines between features that show the intended progression of activities.

The Schedule shall be updated as of the cutoff date for the monthly progress pay estimate and submitted to the Engineer before the payment of the progress pay estimate is approved. The Contractor shall provide a copy of the original bar chart showing, for each feature, the days actually worked and the anticipated days required to complete.

- (c) *Critical Path Method.* CPM is a scheduling method which shows the interdependencies between work activities. The critical path is that path through the schedule which, if delayed, will cause a delay to project completion.

The Contractor shall use either Microsoft Project or Primavera Scheduling software to develop and manage the Critical Path Method Schedule. The Contractor shall notify the Project Engineer in writing, when submitting the first schedule which software, will be used. This choice cannot be changed after the first schedule submittal. When the Contractor uses Primavera-scheduling software, the Engineer may request an additional electronic copy of all required schedules and reports converted to the Microsoft Project format on floppy disk or compact disk, for information only. This additional information shall be submitted with all schedule submittals and updates. The Contractor shall perform all work required to ensure that the Microsoft schedule accurately reflects the planned schedule and progress.

The progress schedule shall include as a minimum the salient features of this project as listed in the Commencement and Completion of Work special provision. The progress schedule shall include all activities for all work on the project, including subcontracted work, delivery dates for critical material,

submittal and review periods, milestone requirements and no work periods. Where the project has specific phases, each phase shall be described separately for each applicable salient feature.

Construction activity duration shall not exceed 15 calendar days unless approved by the Engineer. Series of activities that have aggregate durations of five calendar days or less may be grouped in a single activity. For example, “form, reinforce, and pour pier” could be defined as a single activity rather than three.

Time Scaled Logic Diagram: This diagram shall show the logical progression of all activities required to complete the work defined in the Contract. Activity information shall include activity ID, description, duration, early start and finish dates, late start and finish dates, total float, and responsibility.

- (1) Initial Schedule. The Initial Schedule shall include all necessary detail for procurement, construction and submittal activities required during the first 90 days of contract time. In addition, the Initial Schedule shall include a very basic group of activities that describes the time period after the 90th day of contract time and through the completion of the project. Only salient features and other significant activities will be required for the period after the first 90 days of contract time. The 15-calendar day activity duration limit will not apply to the portion of the Initial Schedule beyond the first 90 days of contract time. This submittal shall include a Time Scaled Logic Diagram.
- (2) Project Schedule. The Project Schedule submittal shall consist of a Time Scaled Logic Diagram Schedule Report. It shall be prepared in full and submitted to the Engineer within 45 calendar days after the Engineer’s acceptance of the Initial Schedule. The Engineer’s review of the Project Schedule will not exceed seven calendar days. Revisions required as a result of the Engineer’s review shall be submitted within 7 calendar days. Work shall not continue beyond 90 calendar days after the start of Contract Time until the Project Schedule is accepted in writing, unless otherwise approved by the Engineer.

The Project Schedule shall cover the time from the Date of Notice to Proceed to the predicted completion date.

The Schedule Report shall tabulate for each activity the activity ID, description, duration, earliest start and finish date, latest start and finish date, total float time, predecessor and successor activities, and responsibility.

- (3) Schedule Updates. The Contractor shall update the Initial Schedule or the Project Schedule monthly to reflect actual construction progress of all work activities on the project. Updates shall show the previous month’s progress and a projection for all remaining work activities on the project.

108.03

Schedules shall be updated as of the cutoff date for the monthly progress pay estimate and submitted to the Engineer before the payment of the progress pay estimate is approved.

Each of the diagrams, charts, and reports shall comply with the requirements for the Project Schedule above, except that they shall also include the actual completion dates and percentages of completion for the appropriate activities.

A Job Progress Narrative Report shall be submitted with all updates. It shall detail the description of job progress, problem areas, current and anticipated delaying factors and their anticipated effects, impacts to job milestones or project completion, any corrective action proposed or taken, and any minor revisions to the Schedule.

Revision of the Schedule may be required, as determined by the Engineer, for: a major revision in the schedule logic or methods of construction; the addition, deletion, or revision of activities required by contract modification; delays in milestones or the completion of the project; or for prosecution of work that revises the phasing or staging which is represented on the plans or on the progress schedule.

If it is determined that a revision to the Schedule is required, it shall be provided to the Engineer for review within 15 calendar days of written notification. The Engineer's review of the revised schedule will not exceed one week. Revisions required as a result of the Engineer's review shall be submitted within one week. When accepted by the Engineer in writing, the revised schedule shall become the Project Schedule.

The Contractor shall participate in the Engineer's review and evaluation of the submittals. Meetings will be held to review progress and planning when requested by the Engineer or Contractor.

The Contractor shall prosecute the work according to the Schedule. The Contractor ensure that its subcontractors, suppliers, and engineers, at any tier, also prosecute the work according to the Schedule. The Department shall be entitled to rely on the Contractor's Schedule for planning and coordination.

Acceptance of the Contractor's Schedule by the Engineer is not to be construed as relieving the Contractor of obligation to complete the contract work within the contract time allowed for the portion of the work or the entire Contract, or granting, rejecting or in any other way acting on the Contractor's request for extension of contract time, or claims for additional compensation.

All costs relating to the preparation, submittal, and acceptance of the Schedule, reports and revisions, and all requirements of this subsection will not be paid for separately, but shall be included in the work.

Failure of the Contractor to comply with the requirements of this subsection shall be grounds for a determination by the Engineer that no further progress payments are to be made until the Contractor is in full compliance.

108.04 Limitation of Operations. The Contractor shall conduct the work in a manner and sequence to assure the least interference with traffic. The Contractor shall not open up work to the prejudice or detriment of work already started. The Engineer may require the Contractor to finish a section of work before starting any additional sections if the opening of a section is essential to public convenience.

108.05 Character of Workers; Methods and Equipment. The Contractor shall employ resources for completing work to full completion in the manner and time required by the Contract.

All workers shall have skill and experience to perform the work assigned to them.

Any person employed by the Contractor or by any subcontractor who does not perform the work in a proper and skillful manner shall, at the written request of the Engineer, be removed by the Contractor or subcontractor and shall not be employed on the project without the approval of the Engineer.

Should the Contractor fail to remove this person or persons or fail to furnish skilled and experienced personnel for the proper prosecution of the work, the Engineer may suspend the work by written notice until compliance is achieved.

All equipment used on the project shall be of size and mechanical condition to meet requirements of the work and to produce a satisfactory quality of work. Equipment used shall not cause injury to the roadway, adjacent property, or other highways.

When the methods and equipment to be used are not prescribed in the Contract, the Contractor shall use any methods or equipment that will accomplish the contract work in conformity with the contract requirements.

When the methods and equipment to be used are specified in the Contract, other methods and equipment shall not be used in the performance of the work unless the Contractor receives written authorization from the Engineer.

If the Contractor desires to use a method or equipment other than specified in the Contract, the Contractor may request approval from the Engineer. The request shall include a full description of the methods and equipment proposed to be used and the Contractor's explanation for the proposed change. The Contractor will be fully responsible for producing work in conformity with contract requirements. If the substituted methods or equipment do not produce results conforming to contract requirements, the Contractor shall complete the remaining construction with the originally specified methods and equipment. Deficient work shall be removed, repaired, or replaced to conform with the specified quality by and at the Contractor's

108.05

expense. No increase will be made in the basis of payment for the construction items involved nor in contract time when a change in methods or equipment is authorized.

108.06 Workplace Violence. If a representative or employee of the Contractor, or a subcontractor, commits an act of workplace violence on the project, he shall be sanctioned as provided by the Contractor's employment policies and, where appropriate, shall be reported to law enforcement authorities. At the request of either the Contractor or the Engineer, the Engineer and the Contractor shall meet to discuss appropriate actions to be taken against the representative or employee. Appropriate action may include removing the representative or employee from the project. If removal is warranted and the Contractor fails to remove the representative or employee, the Engineer may suspend the work by written notice until compliance is achieved.

108.07 Determination and Extension of Contract Time. The contract time is stated in the Commencement and Completion of Work special provision. The contract time will be used to determine the Contract Completion Date.

The Contractor shall not carry on construction operations on Saturdays, Sundays or holidays unless previously arranged and approved. The Contractor shall not perform work on any day of a three or four day holiday weekend when the holiday is New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day. The Contractor shall only make emergency repairs, and provide proper protection of the work and traveling public on these days.

- (a) *Time Count Contract.* When the contract time is on a working day or calendar day basis, the Engineer will furnish the Contractor a weekly statement showing the number of days assessed for the preceding week and the number of days remaining for completion of the Contract. If the Contractor is in disagreement with the current weekly statement, the Contractor shall submit a request for review of the current weekly statement. Such request shall be made within 30 calendar days of the receipt of the statement and shall detail the reasons the statement is believed to be incorrect.

When final acceptance has been made by the Engineer as prescribed in subsection 105.20, the daily time charges will cease on working day and calendar day projects.

1. *Working Day Contract.* When the work is on a working day basis, one whole day of contract time will be assessed for each working day on which the work can be effectively prosecuted during six hours or more of the day. One-half day will be assessed for each working day on which the work can be effectively prosecuted for at least two hours but less than six hours of the day. Contract time will not be assessed when the work can be effectively prosecuted for less than two hours. Saturdays, Sundays, and holidays will be assessed as working days when the Contractor utilizes such days for prosecuting the work.

2. *Calendar Day Contract.* When the work is on a calendar day basis, one calendar day of contract time will be assessed for each calendar day from the date that Contract time starts including Saturdays, Sundays, and holidays. Less than full time charges may be made on those days when conditions, which are beyond the control of and unknown to the Contractor, make it impossible to prosecute the work on items controlling the completion of the work with full, normal efficiency. Less than full time charges may be allowed for inclement weather only when the Engineer directs the Contractor not to work for the safety of the traveling public. When less than full time charges are to be assessed, the following procedures will be followed: One whole day of contract time will be assessed for each calendar day on which the work is prosecuted during six hours or more of the Contractor's daily working schedule; one-half day will be assessed for each calendar day on which the work is prosecuted for at least two hours but less than six hours of the day; contract time will not be assessed when the work is prosecuted for less than two hours.
- (b) *Completion Date Contract.* When the Contract specifies a completion date, all work under the Contract shall be completed on or before that date. No extension of the completion date will be allowed for inclement weather, foreseeable causes, or conditions under the control of the Contractor.

If all work under the Contract is not completed on or before the specified completion date, contract time will be assessed for each additional calendar day in accordance with subsection 108.07 (a) 2.

- (c) *Delay.* Delay is defined as any event, action or factor that extends the time for the performance of the work.
1. *Excusable Delay.* A delay that was beyond the Contractor's control and not caused by the Contractor's fault or negligence, and for which a contract time extension may be granted.
 - A. *Compensable Delay.* An excusable delay caused by the Department for which the Contractor may be entitled to additional monetary compensation. Monetary compensation for such delays will be made in accordance with subsection 109.10.
 - B. *Noncompensable Delay.* An excusable delay for which the Contractor may be entitled to an extension of contract time but no additional monetary compensation. Contract time allowed for the performance of the work may be extended for delays caused by acts of God, acts of the public enemy, fires, floods, area wide strikes, freight embargoes, unusually severe weather, or delays not caused by the Contractor's fault or negligence.

108.07

2. *Nonexcusable Delay.* A delay that was reasonably foreseeable or within the control of the Contractor for which no monetary compensation or contract time extension will be granted.

Delays in delivery of materials or fabrication scheduling, resulting from late ordering, financial considerations, or other causes which could have been foreseen or prevented, will be considered nonexcusable delays. However, delays caused by fuel shortage or delay in delivery of materials to the Contractor due to some unusual market condition caused by industry-wide strike, national disaster, area-wide shortage, or other reasons beyond the control of the Contractor which prevent procurement of materials or fuel within the allowable contract time limits will be considered excusable delays.

- (d) *Extension of Contract Time.* The Contractor's claim that insufficient contract time was specified is not a valid reason for an extension of contract time.

If the Contractor finds it impossible for reasons beyond the Contractor's control to complete the work within the contract time, as specified or extended, a written request for extension of contract time shall be submitted to the Engineer in two parts. The first part shall be a written notice submitted within seven days of the occurrence of a delay to the prosecution of the work. The notice shall contain a description of the activity which is delayed and information with appropriate documentation concerning the nature and cause of the delay.

The second part shall be a formal request by the Contractor for an extension of contract time which shall be submitted within 30 days of the initial notice. This part of the request shall be accompanied by evidence supporting the request. Such evidence shall demonstrate the following:

- (1) The cause for the delay is allowable for consideration of a contract time extension under the terms of the Contract.
- (2) The cause for the delay is allowable for consideration of monetary compensation under the terms of the Contract (to be submitted only if the Contractor is seeking monetary compensation for the delay).
- (3) The delay has or will make it impossible for the Contractor to complete the work by the specified completion dates without taking steps to accelerate the work.
- (4) A schedule revision as defined in subsection 108.03 shall accompany the request. The Schedule as revised shall clearly indicate that the activity or activities delayed were critical or have become critical due to the delay. For the purpose of these specifications, an activity shall be considered critical if all previously available float time has been used, and this delay will directly delay the Contract Completion Date. Float time is the length of time that an activity can be delayed without affecting the Contract Completion Date.

The Engineer’s determination as to the extension of contract time to be allowed will be based on the current Schedule in effect at the time of the alleged delay, the supporting evidence submitted by the Contractor and any other relevant information available to the Engineer. The impact of the delay shall be reflected in the Schedule by adding activities or extending the duration of the affected activities, and, if appropriate, adjusting the Contract Completion Date. Delays in activities which, according to the current Schedule, do not affect the final Contract Completion Date will not be the basis for a change in the Contract Completion Date. If the Engineer grants an extension of the contract time, the Contract Completion Date as extended shall be in effect as though it were the contract time originally specified in the Contract.

108.08 Failure to Complete Work on Time. A daily charge will be made against the Contractor for each calendar day, including free time, that any work remains uncompleted after the elapse of contract time. This daily charge will be deducted from any money due the Contractor. This deduction will not be considered a penalty, but as liquidated damages.

The schedule of liquidated damages set forth below is an amount, agreed to by the Contractor and the Department, as reasonably representing additional construction engineering costs incurred by the Department if the Contractor fails to complete performance within the contract time.

The schedule of liquidated damages will be:

Original Contract Amount		Liquidated Damages per Calendar Day (\$)
From More Than	To And Including	
0	150,000	67
150,000	250,000	174
250,000	500,000	430
500,000	1,000,000	1,086
1,000,000	2,000,000	1,778
2,000,000	4,000,000	2,363
4,000,000	10,000,000	3,240
10,000,000	-----	3,240 plus 583 Per Each Additional 1,000,000 Contract Amount or Part Thereof Over 10,000,000

Due account shall be taken of any adjustment of the contract time for completion of the work granted under the provisions of subsection 108.07.

Permitting the Contractor to continue and finish the work or any part thereof after elapse of contract time will not operate as a waiver on the part of the Department of any of its rights under the Contract.

108.08

Deductions assessed as liquidated damages under this subsection shall not relieve the Contractor from liability for any damages or costs resulting from delays to other contractors on the project or other projects caused by a failure of the assessed Contractor to complete the work according to contract times.

108.09 Default of Contract.

- (a) The Engineer may send a written notice of intent to find the Contractor in default to the Contractor and the Surety by certified mail for any of the reasons listed below. The notice will describe the conditions causing the impending default, advise them of the actions required for remedy and state that if the conditions have not been corrected within ten days of receipt of the notice, CDOT will find the Contractor in default.

The Department may send a written notice of intent under this part (a) if the Contractor:

- (1) Fails to begin the Contract work within the time specified to begin work, or
- (2) Fails to perform the Contract work with sufficient resources to assure its timely completion, or
- (3) Discontinues the Contract work, or
- (4) Fails to resume discontinued Contract work, or
- (5) Becomes insolvent, is declared bankrupt, commits an act of bankruptcy or insolvency, allows a final judgment to remain unsatisfied for a period of ten calendar days, makes an assignment for the benefit of creditors, or
- (6) Fails to comply with the Contract regarding minimum wage payments, DBE requirements, or EEO requirements, or
- (7) Is a party to fraud.

If the Contractor fails to correct the conditions identified in the notice of intent to find the Contractor in default within ten calendar days of receipt, the Department may serve the Contractor with an immediate notice of default and take prosecution of the work from the Contractor. Copies of the default notice will also be sent, by certified mail, to the Contractor and the Surety.

- (b) The Engineer may send a written notice of intent to find the Contractor in default to the Contractor and the Surety by certified mail for the reason listed below. The notice will include a stop work order which will require the Contractor to cease work on the Contract Items that are unacceptable. The notice will describe the conditions causing the impending default, advise the Contractor of the actions required for remedy and state that if the conditions have not been corrected within ten days of receipt of the notice, CDOT will find the Contractor in default.

The Department may send a written notice of intent under this part (b) if the Contractor fails to perform the work to Contract requirements or neglects or refuses to correct or remove and replace rejected materials or unacceptable work.

The Contractor shall not resume work on the unacceptable Contract Items until the following conditions have been met:

- (1) The Contractor shall submit a written proposal to the Engineer outlining the procedures which will be followed by the Contractor to correct the unacceptable conditions, and;
- (2) The Engineer and the Contractor shall meet to discuss the written proposal, and;
- (3) The Engineer will issue written permission for the Contractor to commence work.

If the Contractor fails to meet these three conditions within ten calendar days of receipt of the notice of intent to find the Contractor in default, or if at any time after the Contractor resumes work, the work does not meet Contract requirements or the Contractor again neglects or refuses to correct or remove and replace rejected materials or unacceptable work, the Department may serve the Contractor with an immediate notice of default and take prosecution of the work from the Contractor. Copies of the default notice will also be sent, by certified mail, to the Contractor and the Surety.

(c) In the case of default under either subsection 108.09(a) or 108.09(b):

- (1) The Department will revoke the Contractor's Prequalification. If the Department chooses to rebid the remaining Contract work on this project, the Contractor will not be allowed to submit a bid for this work.
- (2) The Department may appropriate or use materials at the project site and contract with others to complete the remaining Contract work.
- (3) The Department will determine the methods used for completion of the Contract.
- (4) Resulting costs and charges incurred by the Department will be deducted from payments owed the Contractor. If such costs exceed the payment owed the Contractor, the Contractor and Surety shall reimburse the Department for these costs. These costs and charges may include but are not limited to: cost of Contract completion, including designing, advertising, bidding and awarding the remaining work and liquidated damages or disincentives.

(d) If the notice of default is determined to be in error, the rights and obligations of the parties shall be the same as if the Contract had been terminated in accordance with Subsection 108.09. Damages for improper notice of default may be awarded accordingly.

108.10 Termination of Contract.

(a) *Termination Notice.* The Department may terminate work under the Contract in whole or in part if the Engineer determines that termination is in the Department's best interest. Contract termination will be initiated by the

108.10

Engineer's written Contract Termination Notice to the Contractor. The notice will specify the effective date.

- (b) *Canceled Commitments.* The Contractor, after receiving the Contract Termination Notice, shall cancel any outstanding commitments for procurement of materials, supplies, equipment, and miscellaneous items. In addition, the Contractor shall use reasonable effort to cancel or divert any outstanding subcontract commitments to the extent they relate to any work terminated. With respect to such canceled commitments the Contractor shall:
 - (1) Settle all outstanding liabilities and all claims arising out of these canceled commitments. Such settlements will be approved by the Engineer and shall be final; and
 - (2) Assign to the Department all of the rights, title and interest of the Contractor under the terminated orders and subcontracts, as directed. The Department will then have the right to settle or pay any or all claims arising out of the termination of these commitments.
- (c) *Termination Claim.* The Contractor shall submit the termination claim to the Engineer within 90 days after the termination notice effective date. During the 90 day period, the Contractor may make a written request for a time extension in preparing the claim. Any time extension must be approved by the Engineer. If the Contractor fails to submit the termination claim within the time allowed, the Engineer may determine the amount due the Contractor by reason of the termination.
- (d) *Payment.* Subject to subsection 108.10(c) above, the Contractor and Engineer may agree upon the whole or any part of the amount to be paid to the Contractor because of the termination. The amount may include reasonable cancellation charges incurred by the Contractor. The amount may also include any reasonable loss upon outstanding commitments for subcontracts which the Contractor is unable to cancel, provided the Contractor has made reasonable effort to divert the commitments to other activities. The amount agreed upon shall be embodied in a Contract Modification Order and the Contractor shall be paid that amount.

Payments claimed and agreed to pursuant to termination shall be based on the Contract unit prices. Payment for partially completed lump sum items may be made in the proportion that the partially completed work is to the total lump sum item. Where work performed is of a nature that it is impossible to separate the costs of uncompleted work from completed units, the Contractor will be paid the actual cost incurred for the necessary preparatory work and other work accomplished.

The Department may from time to time, under terms and conditions it may prescribe, make partial payments against costs incurred by the Contractor in connection with the contract termination. The total of such payments shall not

exceed the amount, as determined by the Engineer, the Contractor will be entitled to hereunder.

- (e) *Disposition of Work and Inventory.* The Contractor shall transfer title and deliver to the Department, as directed, such items which, if the Contract had been completed, would have been furnished to the Department including:
- (1) Completed and partially completed work; and
 - (2) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the contract termination may, with written approval of the Engineer, be sold or acquired by the Contractor under the conditions prescribed by and at prices approved by the Engineer. The proceeds of any such disposition shall be applied to reduce any payments to the Contractor under the Contract, or shall otherwise be credited to the cost of work covered by the Contract, or paid in a manner as directed. Until final disposition, the Contractor shall protect and preserve all the material related to the Contract which is in the Contractor's possession and in which the Department has or may acquire an interest.

- (f) *Cost Records.* The Contractor agrees to make cost records available to the extent necessary to determine the validity and amount of each item claimed.
- (g) *Contractual Responsibilities.* Termination of a Contract or portion thereof shall not relieve the Contractor of contractual responsibilities for the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the work performed.

109.01

SECTION 109 MEASUREMENT AND PAYMENT

109.01 Measurement of Quantities. All work completed under the Contract will be measured by the Engineer according to United States standard measure (English units).

A station when used as a definition or term of measurement will be 100 linear feet.

The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and deductions will not be made for individual structures having an area of 9 square feet or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or as ordered in writing by the Engineer.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.

Items which are measured by linear foot, such as pipe culverts, guardrail, underdrains, etc., will be measured parallel to the base or foundation upon which the structures are placed, unless otherwise shown on the plans.

In computing volumes of excavation and embankment, the average end area method or the method incorporated into the Department's computer earthwork program will be used.

The term "gage," when used in connection with the measurement of plates, will mean the U.S. Standard Gage.

When the term "gage" refers to the measurement of wire, it will mean the wire gage specified in ASTM A510.

The term "ton" will mean the short ton consisting of 2000 pounds avoirdupois.

Materials measured or proportioned by weight shall be weighed on accurate scales. Scales shall be accurate within the allowable tolerances as prescribed by State law. The scales shall be sealed by the Measurement Standards Section of the Colorado Department of Agriculture at least once each year, each time the scales are relocated, and as often as the Engineer may deem necessary. Scales shall be furnished by the Contractor or the Contractor may utilize commercial scales.

Scales shall be operated by weighers certified by the Measurement Standards Section of the Colorado Department of Agriculture. The certified weigher shall perform the

duties according to the Colorado Department of Agriculture's regulations. The cost of the certified weighers, scales, scale tickets, scale house, and verifying the scale's accuracy will not be paid for separately but shall be included in the contract price for the weighed material.

The operator of each vehicle weighed by a certified weigher shall obtain a scale ticket (certificate of correct weight) from the weigher and deliver the ticket to the Engineer at the point of delivery of the material.

The scale ticket shall include the following information:

- (1) Project Number.
- (2) Date.
- (3) Ticket Number.
- (4) Haul Unit Number.
- (5) Gross Weight.
- (6) Tare Weight.
- (7) Net Weight.
- (8) Material Type.
- (9) Certified Weigher's Name.

Vehicles used to haul material being paid for by weight shall be weighed empty daily at times directed by the Engineer and shall bear a plainly legible identification mark. The Contractor shall furnish to the Engineer, in writing, a list of identification marks, number of axles, and the distance between extreme axles of each delivery vehicle to be used on the project. This information shall be furnished prior to time of delivery of the material and at any subsequent time the Contractor changes vehicles, combination vehicles, or axle length relationships.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type, provided the body is shaped so the actual contents may be readily and accurately determined. All vehicles shall be loaded to their water level capacity and all loads shall be leveled when the vehicles arrive at the point of delivery.

Water used in the work will be measured by the M Gallon or 1000 U.S. Gallons. The weight of inherent moisture in the material will not be deducted. Water added for the Contractor's convenience will not be paid for.

Water may be measured either by volume or weight. Water meters shall be accurate within a range of ± 3 percent. When water is metered, the Contractor shall use an approved metering device and shall furnish the Engineer a certificate showing that the meter has been accurately calibrated within the time allowed in the following schedule:

2 inch	4 years
4 inch to 6 inch	2 years
8 inch to 10 inch	1 year

109.01

Water meters shall be calibrated when the Engineer determines there is reason to believe the meters are not accurate within the allowable tolerance. In the event water meter accuracy is found acceptable, the cost involved in checking the water meter shall be at the Department's expense. Should the water meter accuracy be found unsatisfactory, the cost involved in checking the water meter shall be at the Contractor's expense.

For those materials specified to be measured by the cubic yard, an acceptable method of computing volumes of excavation is to determine a weight to volume factor and convert weight to volumes by means of the factor. The weight to volume factor shall be determined by Colorado Procedures 22 or 80 as described in the Department's Field Materials Manual. The number of tests used to determine the material weight to volume factor will be determined by the Engineer. The locations where the tests are taken shall be at those locations specified in the "Method of Measurement" for the particular bid item; i.e., Unclassified Excavation - in its original position: Embankment Material - in its final compacted position, etc.

Bituminous materials will be measured by the gallon or ton. Volumes will be measured at 60 °F or will be corrected to the volume at 60 °F using ASTM D 1250 for asphalts or ASTM D 633 for tars. Net certified scale weight or weight based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when bituminous material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work. When bituminous materials are shipped by truck or transport, net certified weight or volume subject to correction for loss or foaming, will be used for computing quantities.

Cement will be measured by the ton.

Timber will be measured by the number of thousand feet board measure or MFBM actually incorporated in the structure. Measurement will be based on nominal commercial widths and thicknesses.

The term "lump sum" when used as an item of payment will mean complete payment for the work described in the Contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will include all necessary fittings and accessories.

Rental of equipment will be measured in hours of actual working time and necessary traveling time of the equipment within the limits of the project. If special equipment has been ordered by the Engineer in connection with force account work, travel time and transportation to the project will be measured. If equipment has been ordered held on the job on a standby basis by the Engineer, and is not otherwise utilized by the Contractor, standby rental rates for the equipment will be paid at the rates specified in subsection 109.04.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gage, unit weight, section dimensions, etc., the identification will be considered to be nominal weight or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

109.02 Scope of Payment. The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials and for performing all work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof, subject to the provisions of subsection 107.21.

Work or materials for which there are pay items and which are to be paid for separately will be included in the appropriate pay item in the Summary of Approximate Quantities on the plans. Work or materials that are essential to the project but for which there are no pay items, will not be measured and paid for separately but shall be included in the project.

Payment for any pay item listed in the Summary of Approximate Quantities on the plans, having additional items shown within parentheses, shall be full compensation for all work necessary to complete the item as designated.

109.03 Compensation for Altered Quantities. When the accepted quantities of work vary from the quantities in the Contract the Contractor shall accept as payment in full, payment at the original contract unit prices for the accepted quantities of work done. Allowance will not be made except as provided in subsections 104.02 and 108.10, for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly from such alterations or indirectly from unbalanced allocation of overhead expense among the contract items or from any other cause.

Should any such alteration directly cause the loss of any work or materials already furnished by the Contractor under the terms of the original contract, reimbursement for such work or of salvaging such materials will be at actual cost. Any such materials may, at the option of the Department, be purchased at the actual cost to the Contractor, as evidenced by certified invoices.

109.04 Compensation for Changes and Force Account Work. Differing site conditions, changes, and extra work performed under Section 104 will be paid as stipulated in the order authorizing the work. Compensation will be at unit prices or lump sum, or the Department may require the Contractor to do the work on a force account basis to be compensated in the following manner:

- (a) *Labor.* For all labor and foremen in direct charge of the specific operations, the Contractor will receive the actual rate of wage normally paid for each and every hour that the labor and foremen are actually engaged in the work, as documented by certified payrolls.

109.04

The Contractor will receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits, or other benefits, when the amounts are required by a collective bargaining agreement or other employment contract or generally applicable to the classes of labor employed on the work.

An amount equal to 67 percent of the actual wages and fringe benefits paid directly to the employees will also be paid to the Contractor. This 67 percent will not be applied to subsistence, travel allowance, or to fringe benefits paid to a third party or a trustee.

- (b) *Materials.* For materials accepted by the Engineer and incorporated in the work, the Contractor shall receive the actual cost of such materials, including transportation charges paid (exclusive of equipment rentals as hereinafter set forth), to which 15 percent will be added.
- (c) *Owned or Leased Equipment.* For the use of any machinery or equipment, approved by the Engineer, which is owned or leased directly by the Contractor or subcontractors, or by entities that are divisions, affiliates, subsidiaries or in any other way related to the Contractor or subcontractors or their parent companies, the Contractor will be paid in the manner hereinafter specified. Rental rates will be from the current edition of the Rental Rate Blue Book of Rental Rates for Construction Equipment and will be used as follows:

- 1. Determination of the rental rate to be used will be as follows:

Hourly rate: $RR=(ADJ\ BB/176)(RF)+EOC$
Standby rate: $SR=(ADJ\ BB/176)(RF)(0.5)$

Where: RR = Hourly rental rate
SR = Standby rate
ADJ BB = Blue Book Monthly Rate adjusted for year of manufacture
RF = Regional Factor of 1.06
EOC = Estimated Hourly Operating Costs from Blue Book

- 2. The number of hours to be paid for will be the number of hours that the equipment is actually used on a specific force account activity.
- 3. Overtime shall be compensated at the same rate indicated in subsection 109.04(c)1. above.
- 4. The EOC will be used for each hour that the equipment is in operation on the force account work. Such costs do not apply to idle time regardless of the cause.

5. Idle time for equipment will not be paid for, except where the equipment has been held on the Project site on a standby basis at the direction of the Engineer. Such payment will be made at the standby rate established in subsection 109.04(c)1. above. The Engineer must approve the payment of standby rates for equipment before the costs are incurred. Payment for standby time will not be made on any day the equipment operates for eight or more hours. For equipment accumulating less than eight hours operating time on any normal work day standby payment will be limited to only that number of hours that, when added to the operating time for that day, equals eight hours. Additionally, payment for standby time will not be made in any consecutive 30 day period that the equipment operates for 176 or more hours. For equipment accumulating less than 176 hours operating time in any consecutive 30 day period, standby payment will be limited to only that number of hours that, when added to the operating time for that consecutive 30 day period, equals 176 hours. Standby payment will not be made in any case on days not normally a work day.
6. The rates established above include the cost of fuel, oil, lubrication, supplies, incidental tools valued at less than \$500, necessary attachments, repairs, overhaul and maintenance of any kind, depreciation, storage, overhead, profit, insurance, all costs (including labor and equipment) of moving equipment onto and away from the site, and all incidentals, except as allowed in subsection 109.04(c)8.
7. The rental rate for small tools shall be \$2.00 per hour. Small tools are defined as any tool which would be valued between \$500 and \$2,000 if purchased new.
8. Transportation charges for each piece of equipment to and from the site of the work will be paid provided:
 - (1) the equipment is obtained from the nearest source,
 - (2) charges are restricted to those units of equipment not already available or required on the Project, and
 - (3) the equipment is used solely for the force account work.
9. Fast use expendable parts not included in the Rental Rate Blue Book will be paid at certified invoice cost plus 10%. Such parts not totally expended on the force account work will be prorated based on actual use.

Payable time periods will not include:

- (1) time elapsed while equipment is broken down;
- (2) time spent in repairing equipment; or
- (3) time elapsed after the equipment is no longer needed.

If a piece of equipment, that is not in the Blue Book, is needed, rates shall be agreed to in writing before the equipment is used.

109.04

(d) *Rental Equipment.* Use of rental equipment not owned or leased by the Contractor or subcontractors will be paid for by certified invoice cost. The EOC will also be paid if not included in the rental rate. The use of and rates for rental equipment shall be approved by the Engineer prior to use. Proration of rental rates to an hourly rate for equipment not used solely for the force account shall be based on 176 hours per month, 40 hours per week or 8 hours per day as applicable. The cost of moving the rental equipment onto and away from the job will also be paid when the equipment is used solely for the force account work. An amount equal to ten percent of the total due to the Contractor for rental equipment cost will be added to compensate the Contractor for related overhead costs.

(e) *Administrative Compensation.* Administrative compensation will be paid to the Contractor for work performed on a force account basis by a subcontractor, utility, railroad, waste disposal company, or specialty firm. The compensation will be a percentage of the value of the force account work performed in accordance with the following:

To \$1,000.....	10%
Over \$1,000 to \$10,000.....	\$100 plus 5% of excess over \$1,000
Over \$10,000.....	\$550 plus 3% of excess over \$10,000

The percentages will be calculated after certified invoices are furnished by the Contractor. Compensation for administrative loading expenses will be applied to each individual billing for each force account, not to exceed one administrative loading per billing nor one billing per force account per month.

(f) *Records.* The Contractor's representative and the Engineer shall, on a daily basis, agree in writing on the quantities of labor, equipment and materials used for work completed on a force account basis.

(g) *Statements.* Payment will not be made for work performed on a force account basis until the Contractor has furnished the Engineer with triplicate itemized statements of the cost of the force account work, detailed as follows:

- (1) Labor classification, hours, rate, and extension for each labor class or pay rate within a class.
- (2) Equipment type, hours, rate and extension for each unit of equipment.
- (3) Quantities of materials, prices, extensions and transportation charges.
- (4) Administrative compensation when applicable.

Statements shall be accompanied and supported by certified invoices for all materials and rental equipment including transportation charges. If materials used on the force account work are not specifically purchased for the work, but are taken from the Contractor's stock, the Contractor shall furnish a written statement certifying that the materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

- (h) *Alternative Method of Documenting Force Account Work.* The following method of documenting the amount of force account work done may be used in lieu of the method described in subsections 109.04(f) and (g) above, when agreed to by both the Engineer and the Contractor.

The Engineer will keep a daily record of the labor, equipment and material used on approved force account work. The Contractor's representative shall review and initial the record each day to ensure that the record is accurate and complete, and that the costs were actually incurred.

The Contractor shall furnish certified copies of invoices for the cost of all materials used including transportation charges. If materials used on force account work are not specifically purchased for the work, but are taken from the Contractor's stock, the Contractor shall furnish a written statement certifying that the quantity claimed was actually used, and that the price and transportation charges claimed represent the actual cost to the Contractor.

The Engineer will calculate the cost of the force account work each month and include payment on the monthly progress estimate.

- (i) The additional percentages stated in (a) through (h) above constitute full compensation for all items of expense not specifically designated, including general superintendence, use of incidental tools, field and office overhead and profit. The total payment made as provided above shall constitute full compensation for such work.

109.05 Eliminated Items. Should any items contained in the Contract be found unnecessary for the proper completion of the work, the Engineer will notify the Contractor in writing, to eliminate the item. Such action will not invalidate the Contract. The Contractor, by Contract Modification Order, will be reimbursed for actual work done and all costs incurred, including mobilization of materials and equipment prior to the elimination of the items.

109.06 Partial Payments. Partial payments will be made once each month as the work progresses, when the Contractor is performing satisfactorily under the Contract. Payments will be based upon progress estimates prepared by the Engineer, of the value of work performed, materials placed in accordance with the Contract, and the value of the materials on hand in accordance with subsection 109.07. The amount of the progress estimate paid to the Contractor will be subject to the following:

- (a) *Standard Amount Retained.* The Department will make a deduction from the progress estimate in the amount considered necessary to protect the interests of the State, pursuant to Section 24-91-103, CRS. The amount to be retained will be 3 percent of the value of the completed work, exclusive of mobilization and payments for materials on hand, to a maximum of 1½ percent of the original contract amount. No further amount will be retained if the Contractor makes satisfactory progress in the contract work. The amount retained will be in effect until such time as final payment is made, with the following exception which

109.06

requires the Contractor's written request and consent of the Surety: Upon completion and acceptance of the project, after the project quantities are finalized, and the Contractor has submitted the necessary forms, the Engineer may make reduction in the amount retained.

- (b) *Securities in Lieu of Standard Amount Retained.* When the original contract amount exceeds \$80,000, the Contractor may withdraw all or any portion of the standard amount retained if acceptable securities are assigned to the Department, and deposited as set forth in Section 24-91-105, CRS and the implementing regulations. The securities shall at all times have a market value at least equal in value to the sums withdrawn. If at any time the Department determines that the market value of the securities has fallen below the sums withdrawn, the Contractor, shall deposit additional acceptable securities in an amount sufficient to reestablish a total deposit of securities equal in value to the sums withdrawn. This security substitution shall not apply if a part of the contract price is paid from federal, or other sources, and the federal or other source has requirements which are inconsistent with this subsection.
- (c) *Subcontractor and Supplier Claims.* In addition to a standard amount retained, the Department will withhold funds for all claims against the Contractor filed by subcontractors and suppliers, pursuant to Sections 38-26-107 and 24-91-103, CRS.
- (d) *No Payment.* A partial payment will not be made when the total value of the work done since the last estimate amounts to less than \$500.
- (e) *Prompt Payment.* The Contractor shall pay subcontractors and suppliers for all work which has been satisfactorily completed within seven calendar days after receiving payment for that work from the Department. For the purpose of this section only, work shall be considered satisfactorily complete when the Department has made payment for the work.

The Contractor shall include in all subcontracts a provision that this requirement for prompt payment to subcontractors and suppliers must be included in all subcontracts at every tier.

The Contractor shall ensure that all subcontractors and suppliers at every tier are promptly paid.

If the Contractor fails to comply with this provision the Engineer will not authorize further progress estimates until the required payments have been made and the Contractor agrees to make payments as specified.

- (f) *Retainage by the Contractor.* The Contractor may withhold retainage of each progress estimate on work performed by subcontractors. If during the prosecution of the project, a subcontractor satisfactorily completes all work

described on CDOT Form No. 205, as amended by changes directed by the Engineer, the following procedure will apply:

1. The subcontractor may make a written request to the Contractor for the release of the subcontractor's retainage.
2. Within ten working days of the request, the Contractor shall determine if all work described on Form 205 has been satisfactorily completed and shall inform the subcontractor in writing of the Contractor's determination.
3. If the Contractor determines that the subcontractor has not achieved satisfactory completion of all work described on Form 205, the Contractor shall provide the subcontractor with written notice, stating specifically why the subcontract work is not satisfactorily completed and what has to be done to achieve completion. A copy of this written notice shall be provided to the Engineer.
4. If the Contractor determines that the subcontractor has achieved satisfactory completion of all work described on Form 205, the Contractor shall release the subcontractor's retainage within seven calendar days.
5. In determining whether satisfactory completion has been achieved, the Contractor may require the subcontractor to provide documentation such as certifications and releases, showing that all laborers, lower-tiered subcontractors, suppliers of material and equipment, and others involved in the subcontractor's work have been paid in full. The Contractor may also require any documentation from the subcontractor that is required by the subcontract or by the Contract between the Contractor and the Department or by law such as affidavits of wages paid, material acceptance certifications and releases from applicable governmental agencies to the extent that they relate to the subcontractor's work.
6. Within 14 calendar days after receiving the Contractor's request, the Engineer will make inspection of all work described on Form 205. The Engineer will measure and furnish the final quantities to the Contractor of the items completed by the subcontractor. Agreement on these final quantities by the Contractor will not constitute the acceptance of the work described on Form 205 by the Engineer.
7. If the subcontractor performs only a portion of an item of work, the Contractor shall release retainage in accordance with the procedures stated above and when the subcontractor has completed all of the work included in the subcontract, however, final measurement of quantities will not be made until the item of work and all of the work on the associated Form 205 has been completed.

109.06

8. If additional quantities of a particular item of work are required at a later date after final measurement has been made, the Contractor shall perform this work in accordance with Contract requirements and at unit bid prices.

For this subsection only, satisfactory completion of all work described on CDOT Form No. 205 is when all tasks called for in the subcontract as amended by changes directed by the Engineer have been accomplished and documented as required by the Department.

The requirements stated above do not apply to retainage withheld by the Department from monies earned by the Contractor. The Department will continue to process the release of that retainage based upon the completion date of the project as defined in the Commencement and Completion of Work special provision.

The Contractor shall be solely responsible for all additional costs involved in paying retainage to the subcontractors prior to total project completion.

- (g) *Good Cause Exception.* If the Contractor has “good cause” to delay or withhold a subcontractor’s progress payment, the Contractor shall notify the Department and the subcontractor in writing within seven calendar days after receiving payment from the Department. The notification shall specify the amount being withheld and provide adequate justification for withholding the payment. The notice shall also clearly state what conditions the subcontractor must meet to receive payment. “Good cause” shall include but not be limited to the failure of the subcontractor to make timely submission of required paperwork

109.07 Payment for Material on Hand (Stockpiled Material). Payments may be made to the Contractor for materials to be incorporated into the work as evidenced by invoices or cost analyses of material produced on the project subject to the following:

- (1) The material has been fabricated or processed and is ready for installation into the project and conforms to the requirements of the Contract. The Contractor shall provide the Engineer with a monthly accounting of all materials stockpiled on the project for which stockpiled payment is being requested and certification of compliance that the materials conform to the requirements of the Contract. This monthly accounting shall include the specific location of materials, the amounts of materials stockpiled, the amounts of materials incorporated into the work, and the net amounts of materials for which stockpile material payment is being requested.

Payment for stockpiled structural steel (unfabricated milled plate) may be made subject to the following additional conditions:

- (i) The plan quantity of structural steel shall exceed one million pounds.

- (ii) The structural steel shall have been delivered to the Contractor's fabrication plant.
 - (iii) The material conforms to the requirements of the Contract.
 - (iv) Payment shall not exceed 60 percent of the certified invoice cost of the structural steel.
- (2) The material is stored on the project, on State owned property, or at an acceptable secured location within the State of Colorado. In the latter case, the Contractor must provide a document signed by the owner and lessee of the property establishing that the Department has a vested interest in, and the right of access to and possession of the material. The material shall be clearly identified for the CDOT project.

If the material is structural steel (either completely fabricated or unfabricated milled plate), it is stored on the project, stored on State owned property, or identified and stored separately from all other lots of similar material in acceptable storage places. In the latter case, the Contractor shall provide a document signed by the owner and lessee of the property establishing that the Department has vested interest in, and the right of access to and possession of the structural steel. When the structural steel is stockpiled outside the State of Colorado, the Contractor shall reimburse the Department for all costs incurred to verify the quantity of the material, conformance to contract requirements, and proper storage.

- (3) The Contractor provides the Engineer with a written cost analysis which confirms that the balance of funds in the corresponding items is sufficient to complete the installation. Partial payments will not exceed 85 percent of the contract unit price for the item or 100 percent of the certified invoice cost of the stockpiled material, whichever is less.
- (4) The Contractor shall provide the Engineer with a certified invoice.

Payment for stockpiled materials will not relieve the Contractor of responsibility for loss or damage to the material. Payment for living plant materials, perishable materials, or materials which will not become an integral part of the finished project will not be made under this subsection.

109.08 Reserved

109.09 Acceptance and Final Payment. When the project has been accepted as provided in subsection 105.20, the Engineer will prepare the final estimate of the quantities of the various classes of work performed. After approval of the final estimate by the Contractor, payment of the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provisions of the Contract will be made.

All prior estimates and payments, except for those made in accordance with subsection 109.06(f)6. will be subject to correction in the final estimate and payment.

109.10

109.10 Compensation for Compensable Delays. If the Engineer determines that a delay is compensable in accordance with either subsection 105.21 or 108.07, monetary compensation will be determined in accordance with this subsection.

- (a) These categories represent the only costs that are recoverable by the Contractor. All other costs or categories of costs are not recoverable:
 - (1) Actual wages and benefits, including FICA, paid for additional non-salaried labor;
 - (2) Costs for additional bond, insurance and tax;
 - (3) Increased costs for materials;
 - (4) Equipment costs calculated in accordance with subsection 109.04(c) for Contractor owned equipment and based on invoice costs for rented equipment;
 - (5) Costs of extended job site overhead;
 - (6) Subcontractor's claims (the same level of detail as specified herein is required for all subcontractors' claims)
 - (7) An additional 10 percent will be added to the total of items (1), (2), (3), (4), (5), and (6) as compensation for items for which no specific allowance is provided, including profit and home office overhead.

- (b) In adjustment for costs as allowed above, the Department will have no liability for the following items of damages or expense:
 - (1) Profit in excess of that provided in (a) above;
 - (2) Loss of profit;
 - (3) Additional cost of labor inefficiencies in excess of that provided in (a) above;
 - (4) Home office overhead in excess of that provided in (a) above;
 - (5) Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency;
 - (6) Indirect costs or expenses of any nature in excess of that provided in (a) above;
 - (7) Attorneys fees, claim preparation fees, and expert fees.

All costs claimed must be documented and accompanied by a claim certification form obtained from the Department.