

1 Amend **Section 108 - Prosecution and Progress** to read as follows:

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3 **"SECTION 108 - PROSECUTION AND PROGRESS"**

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5 **108.01 Subcontracts.**

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7 **(A) Subcontract Requirements.** Nothing contained in the contract  
8 documents shall create a contractual relationship between the State and  
9 any subcontractor.

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11 Subject to the provisions of Section 103D-302, HRS, the  
12 Contractor may subcontract a portion of the work but the Contractor shall  
13 remain responsible for the work so subcontracted.

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15 The Contractor shall not sublet, sell, transfer, assign, or  
16 otherwise dispose of any duty the Contractor may have pursuant to the  
17 contract without the written consent of the State

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19 The Contractor shall perform with his/her own organization, work  
20 amounting to not less than 30 percent of the total contract cost, except  
21 that any items designated by the State in the contract as 'specialty items'.  
22 Where an entire item is subcontracted, the value of work subcontracted  
23 will be based on the contract item bid price. When a portion of an item  
24 is subcontracted, the value of work subcontracted will be estimated by  
25 the Engineer and be based on the cost of such portion of the contract  
26 items.

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28 The 'Specialty Items' of work for this project are as follows:

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Section No.	Description
613	All Contract Items under Section 613 – Centerline and Reference Survey Monument
614	All Contract Items under Section 614 – Standard Street Survey Monument
621	All Contract Items under Section 621 - Traffic Control Signs
623	All Contract Items under Section 623 – Traffic Signal System
629	All Contract Items under Section 629 - Pavement Markings

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47 No subcontract shall release the Contractor of any liability under  
48 the contract and bonds.  
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50 **(B) Substituting Subcontractors.** Under Section 103D-302, HRS,  
51 the Contractor is required to list the names of persons or firms to be  
52 engaged by the Contractor as a subcontractor or joint contractor in the  
53 performance of the contract. Contractors may enter into subcontracts  
54 only with subcontractors listed in the proposal or with non-listed joint  
55 contractors/subcontractors permitted under Subsection 102.06 -  
56 Preparation of Proposal. No subcontractor may be added or deleted and  
57 substitutions will be allowed only if the subcontractor:  
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- 59 (1) Fails, refuses or is unable to enter into a subcontract, or
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- 61 (2) Becomes insolvent; or
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- 63 (3) Has its subcontractor's license suspended or revoked; or
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- 65 (4) Has defaulted or has otherwise breached the subcontract in
- 66 connection with the subcontracted work; or
- 67
- 68 (5) Is unable to comply with other requirements of law
- 69 applicable to Contractors, subcontractors and public works
- 70 projects.
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72 When the subcontractor is not prosecuting the work in accordance  
73 with the contract, the Contractor shall immediately remove the  
74 subcontractor from the project, upon receipt of a written notice from the  
75 Engineer. The subcontractor shall not again be employed on the project.  
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77 Requests to substitute a subcontractor shall be allowed only upon  
78 the written approval of the Engineer. The Contractor agrees to hold the  
79 State harmless, defend and indemnify the State for all claims, liabilities,  
80 or damages whatsoever, including attorney's fees arising out of or related  
81 to the approval or disapproval of the substitution.  
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83 **108.02 Notice to Proceed (NTP).** A notice to proceed will be given to the  
84 Contractor not later than 90 days from the date of execution of the contract.  
85 The notice to proceed will indicate the date the Contractor is expected to begin  
86 the construction and from which date contract time will be charged.  
87

88 The Contractor shall begin work within 10 working days from the date in  
89 the notice to proceed and shall diligently prosecute the same to completion  
90 within the contract time. In the event that the Contractor fails to start the work,  
91 the Engineer may terminate the contract in accordance with Subsection 108.11 -

Termination of Contract for Cause. The Contractor shall notify the Engineer at least three working days before beginning work.

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

The Contractor shall not begin work before the date in the notice to proceed. Any work done prior to the start date established by the notice to proceed will only be considered authorized work and be paid for as provided in the contract after the start date in the notice to proceed is reached.

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

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

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

- (1) List of the Superintendent and other Supervisory Personnel;
- (2) Name of person(s) authorized to sign for the Contractor;
- (3) Work Schedule;
- (4) Initial Progress Schedule (See Subsection 108.07 – Progress Schedule)
- (5) Water Pollution and Siltation Control Submittals;
- (6) Solid Waste Disposal form;
- (7) Tax Rates;

137           **(8) Insurance Rates**

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139           **(9) Certificate of Insurance** satisfactory to the Engineer that the  
140 Contractor has in place all insurance coverage required by the contract  
141 documents; and

142  
143           **(10) Schedule of agreed prices**

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145           **(11) List of Suppliers.**

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147   **108.05 Character and Proficiency of Workers.** The Contractor shall at all  
148 times provide adequate supervision and sufficient labor and equipment for  
149 prosecuting the work to full completion in the manner and within the time  
150 required by the contract. The superintendent and/or delegated representative  
151 shall act in a civil and honest manner in his/her dealings with the Engineer and  
152 his/her representative and the public in connection with the work.

153  
154           All workers shall possess the proper license and/or certification, job  
155 classification, skill and experience necessary to properly perform the work  
156 assigned to them.

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158           The Engineer may direct the removal of any worker(s) who does not carry  
159 out the assigned work in a proper and skillful manner or who is disrespectful,  
160 intemperate, violent, or disorderly. The worker shall be removed forthwith by  
161 the Contractor and will not work again without expressed permission of the  
162 Engineer.

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164   **108.06 Contract Time.**

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166           **(A) Calculation of Contract Time.** When the contract time is on a  
167 working day basis, the total contract time allowed for the performance of  
168 the work will be the number of working days shown in the contract plus  
169 any additional working days authorized in writing as provided hereinafter.  
170 The count of elapsed working days to be charged against contract time,  
171 will begin from the date of notice to proceed and will continue  
172 consecutively to the date of final acceptance.

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174           When the contract is on a calendar day basis, the total contract time  
175 allowed for the performance of the work will be the number of calendar  
176 days shown in the contract plus any additional calendar days authorized  
177 in writing as provided hereinafter. The count of elapsed calendar days to  
178 be charged against contract time will begin from the date of notice to  
179 proceed and will continue consecutively to the date of final acceptance.  
180 This includes the NTP, holidays and non-working days. The Engineer will  
181 exclude calendar days elapsing between the orders of the Engineer to

suspend work and resume work for suspensions not the fault of the Contractor.

When multiple shifts are used to perform the work, the State will not consider the hours worked over the normal eight working hours per day or night as an additional working day.

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

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

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

**(2) Delay for Permits.** For delays in the routine application and processing time required to obtain necessary permits on the condition that the delay is not caused by the Contractor, and provided that as soon as the delay occurs, the Contractor notifies the Engineer in writing that the permits are not available. Time extensions will be the exclusive relief granted on account of such delays.

**(3) Delays Beyond Contractor's Control.** For delays caused by acts of God, or the public enemy, fire, inclement weather days or adverse conditions resulting therefrom, earthquakes, floods, epidemics, quarantine restrictions, labor disputes impacting the

Contractor or the State, freight embargoes and other reasons beyond the Contractor's control, the Contractor may be granted an extension of time provided that:

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

1. State specifically the reason or reasons for the delay and fully explain in a detailed chronology the effect of this delay to the work and/or the completion date.

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

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

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

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

**(4) Delays in Delivery of Materials and/or Equipment.** For delays in delivery of materials and/or equipment which occur as a result of unforeseeable causes beyond the control and without fault of the Contractor, its subcontractor(s) or supplier(s), the Contractor may be granted an extension of time provided that it complies with the following procedures:

(a) The Contractor's written notice to the Engineer must describe the delays and state the effect such delays may have on the Completion Date of the Contract.

(b) The Contractor, if requested, must submit to the Engineer within five days after a firm delivery date for the material and equipment is established a written statement as to the delay to the progress of the project. The delay must be substantiated as follows:

1. state specifically the reason or reasons for the delay. Explain in a detailed chronology the effect of this delay to the other work and/or the completion date.

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

3. Cite the start and end date of the delay and the days requested therefore. The delay shall not exceed the difference between the originally scheduled delivery date versus the actual delivery date.

(c) Time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor on account of such delay.

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

**(6) Contractor Caused Delays.** No time extension will be considered for the following:

(a) Delays within the Contractor's control in performing the work caused by the Contractor, subcontractor and/or supplier.

319 (b) Delays within the Contractor's control in arrival of  
320 materials and equipment caused by the Contractor,  
321 subcontractor and/or supplier in ordering, and fabricating,  
322 delivery.

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324 (c) Delays requested for changes which the Engineer  
325 determines unjustifiable due to the lack of supporting  
326 evidence or because the change is not on the critical path.

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328 (d) Delays caused by the failure of the Contractor to  
329 submit for review and acceptance by the Engineer, on a  
330 timely basis, such as but not limited to shop drawings,  
331 descriptive sheets, material samples, and color samples  
332 except as covered in Subsection 108.06(B)(3) and  
333 108.06(B)(4).

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335 (e) Failure to follow the procedure within the time allowed  
336 qualifying for a time extension.

337  
338 (7) **Reduction in Time.** If the State deletes or modifies any  
339 portion of the work, an appropriate reduction of contract time may  
340 be made in accordance with Subsection 104.02 - Changes.

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342 **108.07 Progress Schedules.**

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344 (A) **Forms of Schedule.** All schedules shall be submitted using the  
345 specific computer program designated in the bid documents. If no such  
346 scheduling software program is designated, then all schedules shall be  
347 submitted using the latest version of SureTrak Project Manager by  
348 Primavera Systems, Inc.

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350 Schedule submittals shall be as follows:

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352 (1) **For Contracts \$2,000,000) or less or For Contract Time**  
353 **100 Working Days or 140 Calendar Days or less.** For contracts  
354 of \$2,000,000 or less or for contract time of 100 working days or  
355 140 calendar days or less, the progress schedule will be a Time  
356 Scaled Logic Diagram (TSLD). The Contractor shall submit a  
357 TSLD submittal package and it shall meet the following  
358 requirements and have these essential and distinctive elements:

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360 (a) The major features of work, such as but not limited to  
361 BMP installation, grubbing, roadway excavation, structure  
362 excavation, structure construction, shown in the  
363 chronological order in which the Contractor proposes to



work that feature or work and its location on the project. The schedule shall account for normal inclement weather, unusual soil or other conditions that may influence the progress of the work, schedules, and coordination required by any utility, off or on site fabrications, and other pertinent factors that relate to progress;

(b) All features listed or not listed in the contract documents that the Contractor considers a controlling factor for the timely completion of the contract work;

(c) The time span and sequence of the activities or events for each feature, and its interrelationship and interdependencies in time and logic to other features in order to complete the project;

(d) The total anticipated time necessary to complete work required by the contract;

(e) A chronological listing of critical intermediate dates or time periods for features or milestone or phases that can affect timely completion of the project;

(f) Major activities related to the location on the project;

(g) Non-construction activities, such as submittal and acceptance periods for shop drawings and material, procurement, testing, fabrication, mobilization, and demobilization or order dates of long lead material;

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

(i) Show target bars for all activities:

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

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

(l) Have columns with the appropriate data in them for activity ID, Description, Original Duration, Remaining

Duration, Early Start, Early Finish, Total Float, Percent Complete, Resources. The Resource column shall list who is responsible for the work to be done in the activity. These columns shall be to the left of the bar chart.

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

- (a) The information and requirements listed in A above;
- (b) Additional reports and graphics available from the software as requested by the Engineer;
- (c) Sufficient detail to allow at least weekly monitoring of the Contractor and subcontractor's operations;
- (d) The time scaled schematic shall be on a calendar or working days basis. What will be used shall be determined by how the Contract keeps track of time. It will be the same. Plot the critical calendar dates anticipated;
- (e) Breakdown of activity, such as forming, placing reinforcing steel, concrete pouring and curing, and stripping in concrete construction. Indicate location of work to be done in such detail that it would be easily determined where work would be occurring within approximately 200 feet;
- (f) Latest start and/or finish dates for critical phasing;
- (g) Identify responsible subcontractor, supplier, and others for their respective activity;
- (h) No individual activity shall have duration of more than 20 calendar days unless requested and approved by the Engineer;
- (i) All activities shall have work breakdown structure codes and activity codes. The activity codes shall have

coding that incorporates information for phase, location, who is responsible for doing work and type of operation and activity description and

(j) Incorporate all physical access and availability restraints.

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

**(C) Engineer's Acceptance of Progress Schedule.** Submittal of and the Engineer's receipt of any progress schedule shall not imply the Engineer's approval of the schedule's breakdown, its individual elements, any critical path that may be shown nor shall it obligate the Department to make its personnel available outside normal working hours or the working hours established by the Contract in order to accommodate such schedule. The Contractor has the risk of all elements (whether or not shown) of the schedule and its execution. No claim for additional compensation and/or time shall be made by the Contractor or recognized by the Engineer for delays during any period for which an acceptable progress schedule or an updated progress schedule as required by Subsection 108.09(E) – Contractor's Continuing Schedule Submittal Requirements had not been submitted. Any acceptance or approval of the schedule shall be for general format only and shall not be deemed an agreement by the Department that the construction means, methods and resources shown on the schedule will result in work that conforms to the contract requirements or that the sequence or duration indicated are approved as feasible.

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

(1) Four sets of the TSLD schedule.

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

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

498 (4) An anticipated manpower requirement graph plotting  
499 contract time and total manpower requirement. This may be  
500 superimposed over the payment graph.  
501

502 (5) A Method Statement that is a detailed narrative describing  
503 the work to be done and the method by which the work shall be  
504 accomplished for each major activity. A major activity is an activity  
505 that:  
506

507 (a) Has a duration longer than five days;

508 (b) Is a milestone activity;

509 (c) Is a contract item that exceeds \$10,000 on the  
510 contract cost proposal

511 (d) Is a critical path activity; or

512 (e) Is an activity designated as such by the Engineer.  
513  
514  
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516 Each Method Statement shall include the following items  
517 needed to fulfill the schedule:  
518

519 (i) Quantity, type, make, and model of equipment,  
520

521 (ii) The manpower to do the work, specifying worker  
522 classification, and  
523

524 (iii) The production rate per eight hour day, needed to  
525 meet the time indicated on the schedule.  
526  
527  
528

529 (6) Two sets of color time-scaled project evaluation and review  
530 technique charts ("PERT") using the activity box template of Logic  
531 – Early Start or such other template designated by the Engineer.  
532

533 If the Contract Documents establish a sequence or order for the  
534 work, the initial progress schedule shall conform to such sequence or  
535 order.  
536

537 **(E) Contractor's Continuing Schedule Submittal Requirements.**  
538 After the acceptance of the initial TSLD and when construction starts, the  
539 Contractor shall submit four plotted progress schedules, two PERT  
540 charts, and reports on all construction activities every two weeks (bi-  
541 weekly). This scheduled bi-weekly submittal shall also include an  
542 updated version of the project schedule in a computerized software format

as specified by the Engineer. The submittal shall have all the information needed to re-create that time period's TSLD plot and reports. The bi-weekly submittal shall include, but not limited to, an update of activities based on actual durations, all new activities and any changes in duration or start or finish dates of any activity.

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

The Contractor shall submit updates of the anticipated work completion graph, equipment listing, manpower requirement graph or method statement when requested by the Engineer. Such updates shall be submitted within four calendar days from the date of the request by the Engineer.

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

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

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

**(H) Accelerated TSLD.** The submission by the Contractor to the Department of an accelerated schedule indicating completion before the contract completion date will not constitute an agreement to modify the contract time or completion date, nor will the receipt and acceptance of such a schedule modify the obligation of the Department. The Contractor shall be solely responsible for and shall accept all risks and any delays, other than those that can be directly and solely attributed to the Department, that may materialize during the construction work until the contract completion date is reached. The contract time or completion date is established for the benefit of the Department and cannot be changed without an appropriate change order or final acceptance by the Department. The Department may accept the work before the completion date established by the Contract but is not obligated to do so.

589 If the TSLD indicates an early completion of the project the  
590 Contractor shall upon submittal of the schedule cooperate with the State  
591 in explaining how it will be achieved. In addition, the Contractor shall  
592 submit the above explanation in writing which shall include the State's  
593 part, if any, in achieving the early completion date. Early completion of  
594 the project shall not rely on changes to the Contract Documents unless  
595 approved by the Engineer.  
596

597 **(I) Contractor Responsibilities.** The Contractor shall promptly  
598 respond to any inquiries from the Engineer regarding any schedule  
599 submission. The Contractor shall adjust the schedule to address  
600 directives from the Engineer and shall resubmit the TSLD package to the  
601 Engineer until the Engineer finds it acceptable.  
602

603 The Contractor shall perform the work according to the submitted  
604 TSLD. The Engineer may require the Contractor to provide additional  
605 work forces and equipment to bring the progress of the work into  
606 conformance with the TSLD at no additional cost to the State whenever  
607 the Engineer determines that the progress of the work does not insure  
608 completion within the specified contract time.  
609

610 **108.08 Weekly Meeting.** In addition to the bi-weekly schedule meetings, the  
611 Contractor shall be available to meet once a week with the State at the time and  
612 place as determined by the Engineer to discuss the work and its progress  
613 including but not limited to, the progress of the project, potential problems,  
614 coordination of work, submittals, erosion control reports, etc. The Contractor's  
615 personnel attending shall have the authority to make decisions and answer  
616 questions.  
617

618 The Contractor shall bring to weekly meetings a detailed work schedule  
619 showing the next three weeks' work. Number of copies of the detailed work  
620 schedule to be submitted will be determined by the Engineer. The three-week  
621 schedule is in addition to the TSLD and shall in no way be considered as a  
622 substitute for the TSLD or vice versa. The three-week schedule shall show:  
623

624 **(1)** All construction events, traffic control and BMP related activities in  
625 such detail that the Engineer will be able to determine at what location  
626 and type of work will be done for any day for the next three weeks. This  
627 is for the State to use to plan its manpower requirements for that time  
628 period;  
629

630 **(2)** The duration of all events and delays;  
631

632 **(3)** The critical path clearly marked in red or marked in a manner that  
633 makes it clearly distinguishable from other paths and is acceptable to the  
634 Engineer;

(4) Critical submittals and requests for information (RFI's);

(5) The project title, project number, dated created, period the schedule covers, Contractor's name and creator of the schedule on each page.

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

**108.09 Liquidated Damages for Contractor's Delays.** The actual amount of damages resulting from the Contractor's failure to complete the contract in a timely manner is difficult to accurately determine. There the amount of such damages shall be liquidated damages as set forth herein. The State may, at its discretion deduct the amount from monies due or that may become due under the contract.

**(A) Liquidated Damages for Failure to Open Lanes on Time.** In addition to all other remedies for breach of contract, the Engineer may assess liquidated damages for failure of the Contractor, for any reason, to maintain open lanes to the public in the amount of \$500 for every one-to fifteen-minute increment for each lane not open to the public. The maximum amount assessed per day shall be \$5,000. The Engineer will decide the time and liquidated damages assessed.

**(B) Liquidated Damages for Failure to Complete the Work or Portions of the Work on Time.** When the Contractor fails to reach substantial completion of the work for which liquidated damages are specified, within the time or times fixed in the contract or any extension thereof, in addition to all other remedies for breach that may be available to the State, the Contractor shall pay liquidated damages to the State, in the amount of \$700 per working day.

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

**(2) Liquidated Damages for Failure to Complete the Punchlist.** The Contractor shall complete the work on any punchlist created after substantial completion, within the contract time or any extension thereof.

When the Contractor fails to complete the work on such punchlist within the contract time or any extension thereof, the Contractor shall pay liquidated damages to the State of 20 percent

682 of the amount of liquidated damages established for failure to  
683 substantially complete the work within contract time. Liquidated  
684 damages shall not be assessed for the period between  
685

686 a. Substantial completion of the work and the time the  
687 punchlist is delivered to the Contractor,  
688

689 b. The date of the inspection that results in final  
690 acceptance and the receipt by the Contractor of the written  
691 notice of the final acceptance.  
692

693 **(3) Actual Damages Recoverable If Liquidated Damages**  
694 **Deemed Unenforceable.** In the event a court of competent  
695 jurisdiction holds that any liquidated damages assessed pursuant  
696 to this contract are unenforceable, the State will be entitled to  
697 recover its actual damages for Contractor's failure to complete the  
698 work, or any designated portion of the work within the time set by  
699 the contract.  
700

701 **108.10 Suspension of Work.**  
702

703 **(A) Suspension of Work.** The Engineer may, by written order,  
704 suspend the performance of the work, either in whole or in part, for such  
705 periods as the Engineer may deem necessary, for any cause, including  
706 but not limited to:  
707

708 **(1)** Weather or soil conditions considered unsuitable for  
709 prosecution of the work;  
710

711 **(2)** Whenever a redesign that may affect the work is deemed  
712 necessary by the Engineer;  
713

714 **(3)** Unacceptable noise or dust arising from the construction  
715 even if it does violate any law or regulation;  
716

717 **(4)** Failure on the part of the Contractor to:  
718

719 **(a)** Correct conditions unsafe for the general public or for  
720 the workers;  
721

722 **(b)** Carry out orders given by the Engineer;  
723

724 **(c)** Perform the work in strict compliance with the  
725 provisions of the contract; or  
726



727 (d) Provide adequate supervision on the jobsite.  
728

729 (5) The convenience of the State.  
730

731 **(B) Partial and Total Suspension.** Suspension of work on some but  
732 not all items of work shall be considered a "partial suspension".  
733 Suspension of work on all items shall be considered "total suspension".  
734 The period of suspension shall be computed from the date set out in the  
735 written order for work to cease until the date of the order for work to  
736 resume.  
737

738 **(C) Reimbursement to Contractor.** In the event that the Contractor  
739 is ordered by the Engineer in writing as provided herein to suspend all  
740 work under the contract for the reasons specified in Subsections  
741 108.10(A)(2), 108.10(A)(3), or 108.10(A)(5) of the "Suspension of Work"  
742 paragraph, the Contractor may be reimbursed for actual direct costs  
743 incurred on work at the jobsite, as authorized in writing by the Engineer,  
744 including costs expended for the protection of the work. An allowance of 5  
745 percent for indirect categories of delay costs will be paid on any  
746 reimbursed direct costs, including extended branch and home-office  
747 overhead and delay impact costs. No allowance will be made for  
748 anticipated profits. Payment for equipment which is ordered to standby  
749 during such suspension of work shall be made as described in Subsection  
750 109.02(B) - Rental Rates for Idle and Standby Time.  
751

752 **(D) Cost Adjustment.** If the performance of all or part of the work is  
753 suspended for reasons beyond the control of the Contractor except an  
754 adjustment shall be made for any increase in cost of performance of this  
755 contract (excluding profit) necessarily caused by such suspension, and  
756 the contract modified in writing accordingly.  
757

758 However, no adjustment to the contract price shall be made for  
759 any suspension, delay, or interruption:  
760

761 (1) For weather related conditions,  
762

763 (2) To the extent that performance would have been so  
764 suspended, delayed, or interrupted by any other cause, including  
765 the fault or negligence of the Contractor; or  
766

767 (3) For which an adjustment is provided for or excluded under  
768 any other provision of this Contract.  
769

770 **(E) Claims for Adjustment.** Any adjustment in contract price made  
771 shall be determined in accordance with Subsections 104.02 – Changes  
772 and 104.06 – Methods of Price Adjustment.  
773

774 Any claims for such compensation shall be filed in writing with the  
775 Engineer within 30 days after the date of the order to resume work or the  
776 claim will not be considered. The claim shall conform to the requirements  
777 of Subsection 107.15(D) – Making of a Claim. The Engineer will take the  
778 claim under consideration, may make such investigations as are deemed  
779 necessary and will be the sole judge as to the equitability of the claim.  
780 The Engineer's decision will be final.  
781

782 **(F) No Adjustment.** No provision of this clause shall entitle the  
783 Contractor to any adjustments for delays due to failure of its surety, the  
784 cancellation or expiration of any insurance coverage required by the  
785 contract documents, for suspensions made at the request of the  
786 Contractor, for any delay required under the contract, for suspensions,  
787 either partial or whole, made by the Engineer under Subsection  
788 108.10(A)(4) of the "Suspension of Work" paragraph.  
789

790 **108.11 Termination of Contract for Cause.**  
791

792 **(A) Default.** If the Contractor refuses or fails to perform the work, or  
793 any separable part thereof, with such diligence as will assure its  
794 completion within the time specified in this contract, or any extension  
795 thereof, fails to complete the work within such time, or commits any other  
796 material breach of this contract, and further fails within seven days after  
797 receipt of written notice from the Engineer to commence and continue  
798 correction of the refusal or failure with diligence and promptness, the  
799 Engineer may, by written notice to the Contractor, declare the Contractor  
800 in breach and terminate the Contractor's right to proceed with the work or  
801 the part of the work as to which there has been delay or other breach of  
802 contract. In such event, the State may take over the work, perform the  
803 same to completion, by contract or otherwise, and may take possession  
804 of, and utilize in completing the work, the materials, appliances, and  
805 plant as may be on the site of the work and necessary therefore.  
806 Whether or not the Contractor's right to proceed with the work is  
807 terminated, the Contractor and the Contractor's sureties shall be liable  
808 for any damage to the State resulting from the Contractor's refusal or  
809 failure to complete the work within the specified time.  
810

811 **(B) Additional Rights and Remedies.** The rights and remedies of  
812 the State provided in this contract are in addition to any other rights and  
813 remedies provided by law.  
814

815 **(C) Costs and Charges.** All costs and charges incurred by the State,  
816 together with the cost of completing the work under contract, will be  
817 deducted from any monies due or which would or might have become due  
818 to the Contractor had it been allowed to complete the work under the  
819 contract. If such expense exceeds the sum which would have been  
820 payable under the contract, then the Contractor and the surety shall be  
821 liable and shall pay the State the amount of the excess.  
822

823 In case of termination, the Engineer will limit any payment to the  
824 Contractor to the part of the contract satisfactorily completed at the time  
825 of termination. Payment will not be made until the work has satisfactorily  
826 been completed and all required documents, including the tax clearance  
827 required by Subsection 109.10 – Final Payment are submitted by the  
828 Contractor. Termination shall not relieve the Contractor or Surety from  
829 liability for liquidated damages.  
830

831 **(D) Erroneous Termination for Cause.** If, after notice of termination  
832 of the Contractor's right to proceed under this section, it is determined for  
833 any reason that good cause did not exist to allow the State to terminate as  
834 provided herein, the rights and obligations of the parties shall be the  
835 same as, and the relief afforded the Contractor shall be limited to, the  
836 provisions contained in Subsection 108.12 – Termination for  
837 Convenience.  
838

#### 839 **108.12 Termination For Convenience.**

840

841 **(A) Terminations.** The Director may, when the interests of the State  
842 so require, terminate this contract in whole or in part, for the  
843 convenience of the State. The Director will give written notice of the  
844 termination to the Contractor specifying the part of the contract terminated  
845 and when termination becomes effective.  
846

847 **(B) Contractor's Obligations.** The Contractor shall incur no further  
848 obligations in connection with the terminated work and on the date set in  
849 the notice of termination the Contractor shall stop work to the extent  
850 specified. The Contractor shall also terminate outstanding orders and  
851 subcontracts as they relate to the terminated work. The Contractor shall  
852 settle the liabilities and claims arising out of the termination of  
853 subcontracts and orders connected with the terminated work subject to  
854 the State's approval. The Engineer may direct the Contractor to assign  
855 the Contractor's right, title, and interest under terminated orders or  
856 subcontracts to the State. The Contractor must still complete the work  
857 not terminated by the notice of termination and may incur obligations as  
858 necessary to do so.  
859

860 **(C) Right to Construction and Goods.** The Engineer may require  
861 the Contractor to transfer title and to deliver to the State in the manner  
862 and to the extent directed by the Engineer, the following:  
863

864 (1) Any completed work and  
865

866 (2) Any partially completed construction, goods, materials,  
867 parts, tools, dies, jigs, fixtures, drawings, information, and  
868 contract rights (hereinafter called "construction material") that the  
869 Contractor has specifically produced or specially acquired for the  
870 performance of the terminated part of this contract.  
871

872 (3) The Contractor shall protect and preserve all property in the  
873 possession of the Contractor in which the State has an interest.  
874 If the Engineer does not elect to retain any such property, the  
875 Contractor shall use its best efforts to sell such property and  
876 construction materials for the State's account in accordance with  
877 the standards of Section 490:2-706, HRS.  
878

879 **(D) Compensation.**  
880

881 (1) The Contractor shall submit a termination claim specifying  
882 the amounts due because of the termination for convenience  
883 together with cost or pricing data, submitted to the extent required  
884 by Subchapter 15, Chapter 3-122, HAR. If the Contractor fails to  
885 file a termination claim within one year from the effective date of  
886 termination, the Engineer may pay the Contractor, if at all, an  
887 amount set in accordance with Subsection 108.12(D)(3).  
888

889 (2) The Engineer and the Contractor may agree to a settlement  
890 provided the Contractor has filed a termination claim supported by  
891 cost or pricing data submitted as required and that the settlement  
892 does not exceed the total contract price plus settlement costs  
893 reduced by payments previously made by the State, the proceeds  
894 of any sales of construction, supplies, and construction materials  
895 under Subsection 108.12(C)(3), and the proportionate contract  
896 price of the work not terminated.  
897

898 (3) Absent complete agreement, the Engineer will pay the  
899 Contractor the following amounts less any payments previously  
900 made under the contract:  
901

902 (a) The cost of all contract work performed prior to the  
903 effective date of the notice of termination work plus a 5  
904 percent markup on the actual direct costs, including

amounts paid to subcontractor, less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss. No anticipated profit or consequential damage will be due or paid.

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

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

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

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

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

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

(1) All written guarantees required by the contract.

(2) **As-Built Drawing** – The Contractor shall prepare and submit for all work full size 40-inch x 30-inch as-built drawings showing all locations and any and all changes to the work after the work is completed. These as-builts will be the official record and shall be drawn on vellum or other material directed to be used by the Engineer with professional drafting techniques and standards that are acceptable to the State.

950 (3) Complete weekly certified payroll records for the Contractor  
951 and Subcontractors.

952  
953 (4) Certificate of Plumbing and Electrical Inspection.

954  
955 (5) Certificate of building occupancy as required.

956  
957 (6) Certificate of Soil and Wood Treatments.

958  
959 (7) Certificate of Water System Chlorination.

960  
961 (8) Certificate of Elevator Inspection, Boiler and Pressure Pipe  
962 Inspection.

963  
964 (9) Maintenance Service Contract and two copies of a list of all  
965 equipment installed.

966  
967 (10) Current Tax clearance. The contractor will be required to  
968 submit an additional tax clearance certificate when the final  
969 payment is made.

970  
971 (11) Any other final items and submittals required by the contract  
972 documents.

973  
974 (C) **Procedure.** When in compliance with the above requirements,  
975 the Contractor shall notify the Engineer in writing that the project has  
976 reached substantial completion and is ready for pre-final inspection.

977  
978 The Engineer will then make a preliminary determination as to  
979 whether or not the project is substantially complete and ready for pre-final  
980 inspection. The Engineer may, in writing, postpone until after the pre-  
981 final inspection the Contractor's submittal of any of the items listed in  
982 Subsection 108.13(B) – Pre-Final Inspection, herein, if in the Engineer's  
983 discretion it is in the interest of the State to do so.

984  
985 If, in the opinion of the Engineer, the project is not substantially  
986 complete, the Engineer will provide the Contractor a punchlist of specific  
987 deficiencies in writing which must be corrected or finished before the work  
988 will be ready for a pre-final inspection. The Engineer may add to or  
989 otherwise modify this punchlist from time to time. The Contractor shall  
990 take immediate action to correct the deficiencies and must repeat all  
991 steps described above including written notification that the work is ready  
992 for pre-final inspection.

994 After the Engineer is satisfied that the project appears substantially  
995 complete a pre-final inspection shall be scheduled within ten working  
996 days after receipt of the Contractor's latest letter of notification that the  
997 project is ready for pre-final inspection.  
998

999 If, as a result of the pre-final inspection, the Engineer determines  
1000 the work is not substantially complete, the Engineer will inform the  
1001 Contractor in writing as to specific deficiencies which must be corrected  
1002 before the work will be ready for another pre-final inspection. If the  
1003 Engineer finds the work is substantially complete but finds deficiencies  
1004 that must be corrected before the work is ready for final inspection, the  
1005 Engineer will prepare in writing and deliver to the Contractor a punchlist  
1006 describing such deficiencies.  
1007

1008 At any time before final acceptance, the Engineer may revoke the  
1009 determination of substantial completion if the Engineer finds that it was  
1010 not warranted and will notify the Contractor in writing the reasons  
1011 therefore together with a description of the deficiencies negating the  
1012 declaration.  
1013

1014 When the date of substantial completion has been determined by  
1015 the State, liquidated damages for the failure to complete the punchlist, if  
1016 due to the State will be assessed in pursuant to Subsection 108.09(B)(2)-  
1017 Liquidated Damages for Failure to Complete the Punchlist.  
1018

1019 **(D) Punchlist; Final Inspection.** Upon receiving a punchlist after  
1020 substantial completion, the Contractor shall promptly devote all required  
1021 time, labor, equipment, materials and incidentals to correct and remedy  
1022 all punchlist deficiencies. The Engineer may add to or otherwise modify  
1023 this punchlist until final acceptance of the project.  
1024

1025 Before final inspection of the work, the Contractor shall clean all  
1026 ground occupied by the Contractor in connection with the work of all  
1027 rubbish, excess materials, temporary structures and equipment, and all  
1028 parts of the work and the worksite must be left in a neat and presentable  
1029 condition to the satisfaction of the Engineer.  
1030

1031 Final inspection will occur within ten working days after the  
1032 Contractor notifies the Engineer in writing that all punchlist deficiencies  
1033 remaining after the pre-final inspection have been completed and the  
1034 Engineer concurs. If the Engineer determines that deficiencies still  
1035 remain at the final inspection, the work will not be accepted and the  
1036 Engineer will in writing notify the Contractor of the deficiencies which shall  
1037 be corrected and the steps above repeated.  
1038

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

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

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

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

**108.16 Final Acceptance.** When the Engineer finds that the project has been satisfactorily completed in compliance with the contract, the Engineer will notify the Contractor in writing of the project's completion and acceptance and will notify the Contractor in writing of its acceptance effective as of the date of the final inspection. The final acceptance date shall determine end of contract time, liquidated damages for failure to complete the punchlist and commencement of all guaranty periods subject to Subsection 108.17 – Contractor's Responsibility for Work; Risk of Loss or Damage.

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

The risk of loss or damage to the work from any hazard or occurrence that may or may not be covered by a builder's risk policy is that of the Contractor and



Surety, unless such risk of loss is placed elsewhere by express language in the contract documents.

**108.18 Guarantee of Work.**

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

(2) When the Engineer determines that repairs or replacements of any guaranteed work and equipment is necessary due to materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract, the Contractor shall at no cost to the State and within five working days of receipt of written notice from the State, commence to:

(a) Correct all noted defects and make replacements, as directed by the Engineer, in the equipment and work; and

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

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

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

1129 (5) Nothing in this section is intended to limit or affect the State's rights  
1130 and remedies arising from the discovery of latent defects in the work after  
1131 the expiration of any guarantee period.  
1132

1133 **108.19 No Waiver of Legal Rights.** The following will not operate or be  
1134 considered as a waiver of any portion of the contract, or any power herein  
1135 reserved, or any right to damages provided herein or by law:  
1136

1137 (1) Any payment for or acceptance of the whole or any part of the  
1138 work, or  
1139

1140 (2) Any extension of time, or  
1141

1142 (3) Any possession taken by the Engineer.  
1143

1144 A waiver of any notice requirement or of any noncompliance with the  
1145 contract will not be held to be a waiver of any other notice requirement or any  
1146 other noncompliance with the contract.  
1147

1148 **108.20 Final Settlement of Contract.**  
1149

1150 (A) **Closing Requirements.** The contract will be considered settled  
1151 after the project acceptance date and when the following items have been  
1152 satisfactorily submitted, where applicable:  
1153

1154 (1) All written guarantees required by the contract.  
1155

1156 (2) Complete and certified weekly payrolls for the Contractor  
1157 and its Subcontractor's.  
1158

1159 (3) Certificate of Plumbing and Electrical Inspection.  
1160

1161 (4) Certificate of Building Occupancy.  
1162

1163 (5) Certificate for Soil Treatment and wood Treatment.  
1164

1165 (6) Certificate of Water System Chlorination.  
1166

1167 (7) Certificate of Elevator Inspection, boiler and Pressure Pipe  
1168 Installation.  
1169

1170 (8) Tax Clearance.  
1171

1172 (9) All other documents required by the Contract or by law.  
1173

1174 **(B) Failure to Meet Closing Requirements.** The Contractor shall  
1175 meet the applicable closing requirements within 60 days from the date of  
1176 Project Acceptance or the agreed to Punchlist complete date. Should the  
1177 Contractor fail to comply with these requirements, the Engineer may  
1178 terminate the Contract for cause."  
1179  
1180  
1181  
1182

**END OF SECTION**