8-13.1 "Bonus" Payment and Waiver of Contractor Claims.
(REV 7-27-04) (FA 7-28-04) (FY 2027-28)

The Department will pay the Contractor a "Bonus" in the amount of $_____, if the work in the Contract is completed in accordance with 5-11, as determined by the Engineer, on or before _____ ("Bonus Completion Date") and subject to the conditions precedent set forth below. For purposes of the calculation and the determination of entitlement to the "Bonus" stated above, the "Bonus Completion Date" will not be adjusted for any reason, cause or circumstance whatsoever, regardless of fault, save and except in the instance of a catastrophic event (i.e., hurricane or a declared state of emergency).

The parties anticipate that delays may be caused by or arise from any number of events during the course of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of Contractor's operations, or other such events, forces or factors sometimes experienced in highway construction work. Such delays or events and their potential impacts on performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not extend the "Bonus Completion Date" set forth above. Further, any and all costs or impacts whatsoever incurred by the Contractor in accelerating the Contractor's work to overcome or absorb such delays or events in an effort to complete the Contract by the "Bonus Completion Date", regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance.

In the event of a catastrophic event (i.e., hurricane or a declared state of emergency) directly and substantially affecting the Contractor's operations on the Contract, the Contractor and the Department shall agree as to the number of calendar days to extend the "Bonus Completion Date". In the event the Contractor and Department are unable to agree to the number of calendar days to extend the "Bonus Completion Date", the Department shall unilaterally determine the number of calendar days to extend the "Bonus Completion Date" reasonably necessary and due solely to such catastrophic event and the Contractor shall have no right whatsoever to contest such determination, save and except that the Contractor establishes that the number of calendar days determined by the Department were arbitrary or without any reasonable basis.

However, notwithstanding anything above to the contrary, upon the Contractor's written request being made directly to the Chief Engineer, with copies provided to both the Resident Construction Engineer and the District Construction Engineer, the Department reserves unto the Chief Engineer, in their sole and absolute discretion, according to the parameters set forth below, the authority to make a determination to either fully enforce the above provisions with no modification, modify the "Bonus Completion Date" by moving it, or both modify the "Bonus Completion Date" by moving it and also modifying the "Bonus" amount by reducing it.

No modification of a "Bonus" provision will be considered by the Chief Engineer for any impacts whatsoever, beyond the reasonable control of the Contractor, the effect of which results in a time extension of less that 15% of the time remaining in the period from first day of occurrence of such impact to the "Bonus Completion Date". Furthermore, as to any such impact, the effect of which results in a time extension of 15% or more of the time remaining in the period

from first day of occurrence of such impact to the "Bonus Completion Date", no modification of a "Bonus" provision will be considered by the Chief Engineer unless the Contractor clearly establishes that it has continuously from the beginning of the project aggressively, efficiently and effectively pursued the achievement of the "Bonus," including the utilization of any and all reasonably available means and methods to overcome all impacts and accelerate the work so as to still achieve the "Bonus," and, but for this impact, the Contractor would have otherwise earned the "Bonus" provided in the original Contract. Also, to the extent the request is not submitted in writing to the Chief Engineer within not less than twenty (20) calendar days prior to the original "Bonus Completion Date", the Contractor must also continue to aggressively, efficiently, and effectively pursue the completion of the "Bonus" work, including the utilization of any and all reasonably available means and methods to overcome all impacts and accelerate the work, until a determination is made by the Chief Engineer or twenty (20) calendar days has expired since such written notice. There shall be no right of any kind on behalf of the Contractor to challenge or otherwise seek review or appeal in any forum of any determination made by the Chief Engineer under this provision.

The Contractor shall have no rights under the Contract to make any claim arising out of this "Bonus" provision except as is expressly set forth in this Article.

As conditions precedent to the Contractor's entitlement to any "Bonus" the Contractor must:

(1) Deliver in-hand to the Department any and all claims, in full accordance with 5-12.3 and subject to the limitations therein, no later than 60 calendar days after completion of the work on which such claim is based and tentatively schedule a Disputes Review Board hearing while awaiting Department review and response to any such claim. Furthermore, as to any such 5-12.3 claims for which the Disputes Review Board has determined entitlement but both parties have not reached an agreement on monetary compensation prior to final acceptance, and those 5-12.3 claims pending at or submitted after final acceptance, tentatively schedule a Disputes Review Board hearing within 60 calendar days of the final acceptance while awaiting Department review and response to any such claim and the sole forum for final determination as to both entitlement and amount of monetary compensation, if not otherwise mutually resolved or otherwise agreed, shall be the Disputes Review Board.

(2) Actually complete the Contract and obtain final acceptance by the Department, as determined by the Engineer in accordance with 5-11, on or before the "Bonus Completion Date".

(3) No later than 60 days after final acceptance by the Department, the Contractor must either (a) elect to be paid the "Bonus" pursuant to (4) below, or (b) notify the Department in writing that the Contractor is electing to be paid the "Bonus" and is reserving one or more outstanding 5-12.3 claims for final and fully binding determination by the Disputes Review Board, the determinations of the Disputes Review Board as to any such 5-12.3 claims will be fully binding on both the Department and the Contractor, with no right of any kind of challenge, review or appeal in any forum by either party. Further, under (b) herein, any previous Disputes Review Board determinations on any such 5-12.3 claims issues shall then be fully binding and not subject to reconsideration by the Disputes Review Board, regardless of whether either party had previously rejected or otherwise not accepted one or more such recommendations at the time such were rendered.

(4) The Contractor shall notify the Department in writing, within 60 days of the final acceptance of the work in the Contract by the Department, that the Contractor elects

to be paid the “Bonus” which the Contractor is eligible to be paid based on the actual final acceptance date, and such written notice shall constitute a full and complete waiver, release and acknowledgment of satisfaction by the Contractor of any and all claims, causes of action, issues, demands, disputes, matters or controversies, of any nature or kind whatsoever, known or unknown, against the Department, its employees, officers, agents, representatives, consultants, and their respective employees, officers and representatives, the Contractor has or may have as to work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers or subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of the Contractor’s operations, extended or unabsorbed home office or job site overhead, lump sum maintenance of traffic adjustments, lost profits, prime mark-up on subcontractor work, acceleration costs, any and all direct and indirect costs, any other adverse impacts, events, conditions, circumstances or potential damages, on or pertaining to, or as to or arising out of the Contract. This waiver, release and acknowledgment of satisfaction shall be all-inclusive and absolute, save and except any routine Department final estimating quantity adjustments.

Should the Contractor fail to actually complete the Contract and obtain final acceptance by the Department as determined by the Engineer in accordance with 5-11, on or before the “Bonus Completion Date”, or should the Contractor, having done so, fail to timely request the “Bonus” for any reason, and including but not limited to the Contractor choosing not to either reserve one or more outstanding 5-12.3 claims for final and fully binding determination by the Disputes Review Board as set forth in (3)(b) above, or to fully waive, release and acknowledge satisfaction as set forth in (4) above, the Contractor shall have no right to any payment whatsoever under this Article.

In the event the Contractor elects to exercise the “Bonus Payment” provision, should this provision conflict with any other provision of the Contract, the Contract shall be interpreted in accordance with this provision.