8-13.1 "Bonus" Payment and Waiver of Contractor Claims.
(REV 4-12-06) (FA 4-25-06) (FY 2027-28)

The Department desires to expedite construction on this Contract to minimize the inconvenience to the traveling public and to reduce the time of construction. In order to achieve this, "Bonus" provisions are established for the Contract Work Items described below.

The Department will pay the Contractor a "Bonus" as follows:

Contract Work Item	Bonus Completion Date	Bonus Amount
Usage- describe work and tie to the plans Example A: Complete all the work from STA 20+77.00 to STA 40+35.00, including friction course and striping, and open all proposed lanes to traffic, such that no further lane closures will be required to obtain final acceptance of the project except as may be necessary for repair of work damaged before final acceptance.	Alt 1 Calendar days from commencement of Contract Time. Alt 2 Date	(Amount of bonus)
Example: Complete project in accordance with 5-11	Alt 1 Calendar days from commencement of Contract Time. Alt 2 Date	(Amount of bonus)

The "Bonus" will be paid only if the "Contract Work Item" is completed as set forth above, and as determined by the Engineer, on or before the "Bonus Completion Date" as set forth above, 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 was 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 modifying the "Bonus Completion Date" by moving it and also modify 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, for which the effect results in a time extension of less that 15% of the time remaining in the period from the first day of occurrence of such impact to the "Bonus Completion Date", Furthermore, as to any such impact, for which the effect results in a time extension of 15% or more of the time remaining in the period from the 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". This would include 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. This would include 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 also as to those 5-12.3 claims pending at or submitted after "Bonus Completion Date", tentatively schedule a Disputes Review Board hearing within 60 calendar days after the final acceptance date while awaiting Department review and response to any such claim. 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 Work Item" and obtain written verification of completion from the Engineer on or before the "Bonus Completion Date".

(3) Not later than 60 days after verification of the actual "Bonus Completion Date" 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 has 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 receiving written verification of completion of the "Contract Work Item" by the Engineer per (2) above, that the Contractor elects to be paid the "Bonus" which the Contractor is eligible to be paid based on the actual "Bonus Completion 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 Work Item" up to and including the date of the applicable "Bonus Completion Date". 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 Work Item" and obtain written verification of completion of the "Contract Work Item" from the Engineer 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.

As to any Contract Work Item provided for herein, the Contractor will remain responsible for all such work and the continued maintenance thereof until such date as the Department final accepts all Work under the Contract in accordance with 5-11, and without regard to whether the Department has provided written verification of completion or not, and without regard to whether any “Bonus” was earned or elected hereunder.