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No more than ten working days after receipt of the written notice of a potential claim from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of its potential claim if a written response is not issued in the time established. If the Contractor objects to the Engineer’s position, it shall file a written claim with the Engineer within 30 days after delivery to the Engineer of the Contractor’s written notice of a potential claim. Failure by the Contractor to submit a written notice of a potential claim in the time specified waives all rights for an increase in contract time or compensation related to such work. The claim shall be determined as provided in Subsection 107.15 –Disputes and Claims. In all cases, the Contractor shall proceed with the work as specified in the order, direction, instruction, interpretation, or determination immediately upon providing the Engineer with the oral notice described above, unless otherwise directed in writing by the Engineer.

(C) Penal Sum of the Surety Performance and Payment Bonds.
The penal sum of the surety performance and payment bonds will be adjusted by the amount of each and every contract change order

104.03 Field Orders. Upon receipt of the field order the Contractor shall proceed with the work as changed by the field order without delay. If the Contractor does not agree with any of the terms or conditions or the adjustment or nonadjustment to the contract price, contract time, or both set forth therein, the Contractor shall file a written notice of potential claim with the Engineer not later than three days after receipt of the field order. No more than ten working days after receipt of the written notice of a potential claim from the Contractor, a written response shall be issued for the subject work if the State agrees that it constitutes a change. The Contractor shall deem it a rejection of its potential claim if a written response is not issued in the time established. If the Contractor objects to the Engineer’s position, it shall file a written claim with the Engineer within 30 days after delivery to the Engineer of the Contractor’s written notice of a potential claim. Failure to file the written notice of a potential claim or to protest any portion(s) of the field order by the time specified shall constitute agreement on the part of the Contractor with all the terms, conditions, amounts and adjustment or non-adjustment to contract price, contract time, or both, set forth in the field order or the non-protested portion of the field order. Timely written notice shall be a non-waivable condition precedent to the assertion of a claim.

104.04 Contract Change Orders. The Engineer will issue contract change orders when it deems appropriate during the contract period. A contract change order may contain the adjustment in contract price, contract time, or both, for a number of field orders. In all cases, the Contractor shall proceed with the work as changed by the contract change order. No

95 payment for any changes will be made until the contract change order is
96 issued. If the Contractor does not agree with any of the terms or conditions
97 of the adjustment or nonadjustment to either the contract price or contract time
98 set forth therein, the Contractor shall file a written notice of potential claim with
99 the Engineer not later than three days after receipt of the contract change
100 order.

101
102 **104.05 Duty of Contractor to Provide Change Proposals.** A field order
103 may request the Contractor to supply the Engineer with a detailed proposal for an
104 adjustment to the contract price, contract time, or both for the work described
105 therein. Any such request for a proposal shall not affect the duty of the
106 Contractor to proceed as ordered with the work described in the field order.

107
108 At any time without the issuance of a field order, the Engineer may
109 request the Contractor to supply the Engineer with a detailed proposal for an
110 adjustment to the contract price, contract time, or both for contemplated
111 changes in the work. The request for change proposal is not a directive for the
112 Contractor to perform the work described therein.

113
114 The Contractor shall submit a detailed written proposal in a time span
115 allowed by the Engineer or if a time span is not stated by the Engineer it shall be
116 within 15 days after receipt of a request for change proposal or field order
117 containing a request for proposal. The format shall set forth all charges the
118 Contractor proposes for the change and a detailed justification for the proposed
119 adjustment of the contract time, all properly itemized and supported by sufficient
120 substantiating data to permit evaluation. The Engineer will determine whether
121 the proposal is acceptable.

122
123 Unless otherwise authorized by the Engineer in writing, no payment shall
124 be allowed to Contractor for cost incurred for pricing, negotiating, and
125 researching for proposed or actual charges, or designing of construction means
126 and methods for proposed or actual changes. No time extensions will be
127 granted for delay caused by late Contractor pricing of changes or proposed
128 changes or time spent in negotiation.

129
130 The Engineer may accept the entire proposal, or any discrete cost item
131 contained within the proposal, or the proposed adjustment to contract time by a
132 notice in writing to the Contractor delivered to the Contractor within 30 days after
133 receipt of the proposal. The written acceptance by the Engineer of all or part of
134 the Contractor's proposal shall create a binding agreement between the parties
135 for that aspect of the change.

136
137 If the Engineer refuses to accept the Contractor's entire proposal, the
138 Engineer may issue a field order for the work; or if a field order has already been
139 issued, the Engineer may issue a supplemental field order establishing new
140 contract prices, the remaining adjustments to contract price and /or contract time
141 for the ordered changes. If the Contractor disagrees with any term, condition

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142 or adjustment contained in such field order or supplemental field order, it shall
143 follow the protest procedures set forth in and be subject to the other terms of
144 Subsection 104.03 - Field Orders.

145

146 **104.06 Methods of Price Adjustment.** Any adjustment in the contract price
147 pursuant to a change or claim shall be made in one or more of the following
148 ways:

149

150 (1) By written agreement on a fixed price adjustment before
151 commencement of the pertinent performance or as soon thereafter as
152 practicable.

153

154 (2) By unit prices or other price adjustments specified in the contract or
155 subsequently agreed upon.

156

157 (3) The Engineer may base the adjustment for a lump sum item on a
158 calculated proportionate unit price. The Engineer will calculate the
159 proportionate unit price by dividing the original contract lump sum price by
160 the actual or original estimated quantity established by the contract
161 documents.

162

163 (4) In such other lawful manner as the parties may mutually agree.

164

165 (5) At the sole option of the Engineer, work may be paid for on a force
166 account basis in accordance with Subsection 109.06 - Force Account
167 Provisions and Compensation.

168

169 (6) By determination by the Engineer of the reasonable and necessary
170 costs attributed to the event or situation caused by the change, plus
171 appropriate profit or fee, all computed by the generally accepted
172 accounting principles and applicable sections of Chapter 3-123 and 3-126
173 of the HAR and using Subsection 109.05 - Allowances for Overhead and
174 Profit herein, as the method for calculating overhead and profit.

175

176 **104.07 Variations in Estimated Quantities.** Where the quantity of a unit
177 price item in this contract is estimated on the proposal schedule and where the
178 actual quantity of such pay item varies more than 15 percent above or below the
179 estimated quantity stated in this contract, an adjustment in the contract price
180 shall be made upon demand of the party. The adjustment shall be limited to
181 any increase or decrease in direct costs due solely to the variation above 115
182 percent or below 85 percent of the estimated quantity. The adjustment shall be
183 subject to Subsection 104.06 – Methods of Price Adjustment and Subsection
184 109.05 – Allowances for Overhead and Profit.

185

186 **104.08 Differing Site Conditions.** The Contractor shall promptly and
187 before such conditions are disturbed, notify the Engineer of:

188

189 (1) Subsurface or latent physical conditions at the site differing
190 materially from those indicated in this contract; or

191
192 (2) Unknown physical conditions at the site of an unusual
193 nature, which differ materially from those ordinarily encountered
194 and generally recognized as inherent in work of the character
195 provided for in this contract.

196
197 **(A) Timeliness of Notice.** No claim of the Contractor for any
198 adjustment for contract price or contract time under this subsection shall
199 be allowed unless the Contractor gives both:

200
201 (1) A verbal notice within 12 hours of discovery or by 10 A.M. of
202 the next working day, whichever is later, of the differing site
203 condition.

204
205 (2) Written notification of a potential claim to the Engineer no
206 later than 5 days after the discovery of the differing site condition.

207
208 The Engineer in writing may extend the time prescribed in this
209 subsection for giving verbal and written notice. The notices to the
210 Engineer are non-waivable conditions precedent to any claim under this
211 section.

212
213 **(B) Adjustments of Price or Time.** After receipt of the notice, the
214 Engineer shall promptly investigate the site and if it is found that the
215 conditions do materially differ and so cause an increase in the
216 Contractor's cost of, or the time required for, performance of any part of
217 the work under this contract, whether or not changed as a result of the
218 conditions, an equitable adjustment will be made and the contract
219 modified by contract change order. Any such adjustment in contract
220 price or contract time shall be determined in accordance with the relevant
221 adjustment subsections of this contract.

222
223 **(C) No Claim After Final Payment.** No request by the Contractor for
224 an equitable adjustment to the contract shall be allowed if asserted after
225 final payment under this contract.

226
227 **(D) Knowledge.** Nothing contained in this subsection shall be
228 grounds for an adjustment in contract price or contract time if the
229 Contractor had knowledge of the existence of such conditions prior to the
230 submission of the bids.

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232 **104.09 Maintenance of Traffic.** The Contractor shall:

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234 (1) Keep the road open to traffic during the work or provide adequate
235 detour roads as specified or directed.

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(2) Furnish, install, and maintain traffic control devices under Section 645 – Work Zone Traffic Control.

(3) Construct and maintain all necessary accesses such as accesses to parking lots, garages, businesses, residences, and farms.

104.10 Use of Explosives. The use of explosives will not be permitted.

104.11 Utilities and Services.

(A) Contractor’s Duty to Coordinate Utility Work. The Contractor shall contact and cooperate with each affected utility owner in order for the work to progress on schedule and without unreasonable disruption of such utility services. If the work calls for permanent utility service installations or corrections to, or modifications of, existing utilities, the Contractor is responsible for scheduling and coordinating such work with appropriate utility owners. If the work required by the contract documents conflicts with the instructions, demands, or requirements of a utility owner, the Contractor shall notify the Engineer immediately. The Contractor shall furnish the Engineer with evidence that the Contractor has provided all relevant utility owners reasonable opportunity to review the drawings.

When the State has a separate agreement with utility owners for work to be performed within the worksite, at the direction of the Engineer, the Contractor shall make available all portions of the work and the worksite necessary for the utility owners to do their work.

The Contractor hereby holds the State harmless against all risks arising from acts or omissions of utility owners that damage the work, or create delays, disruptions, and additional cost to the Contractor in the performance of the work. Contract time may be extended in accordance with Subsection 108.05 - Contract Time, on account of acts and omissions of utility owners that delay the work without fault of the Contractor.

The Contractor may relocate or adjust the utility lines or service connections for its convenience with the permission of the owner of the utility and the Engineer at no increase in contract price or contract time.

(B) Contractor’s Duty to Locate and Protect Utility. Before beginning any work at the worksite, the Contractor shall:

(1) Ascertain and mark the exact location and depth of all utilities within the project area including taking reasonable steps to

282 detect the existence and location of utilities not shown on the
283 drawing.

284
285 (2) Acquaint all personnel working near utilities with the type,
286 size, location, and depth of the utilities, as well as the
287 consequences that might result from disturbances.

288
289 (3) Take reasonable steps to protect the utilities and prevent
290 service disruption.

291
292 (C) **Discovery of Unknown Utility; Damage to Utility.** Upon
293 discovery of a utility that was not shown to exist in the contract
294 documents, or is found at a location that is substantially different than
295 shown in the contract documents, the Contractor shall promptly notify the
296 Engineer before the utility and its surrounding area are further disturbed.
297 The Contractor shall be responsible for the safety and protection of the
298 public and the utility, subject to further direction from the Engineer.
299 Whenever the Contractor damages a utility or causes any interruption to
300 any utility service, the Contractor shall promptly notify the Engineer, the
301 affected utility owner, and the appropriate governmental authorities. The
302 Contractor shall cooperate with the affected utility owner and the
303 appropriate governmental authorities in the restoration of service. If the
304 damage is to a utility that is known, or should have been discovered
305 before the damage occurred, the Contractor shall be responsible for all
306 costs associated with its repair and restoration of service, at no increase
307 in contract price or contract time.

308
309 **104.12 Overweight Vehicle Control.** All weight tags for aggregates and
310 hot mix asphalt concrete transported to the worksite shall be submitted daily to
311 the Engineer. The maximum legal total gross weight (W) as calculated by the
312 formulas in HRS Chapter 291-35 Gross weight, axle, and wheel loads, for the
313 transporting vehicle shall be clearly indicated on the weight tag. The Engineer
314 may inspect any material transporting vehicle for compliance with HRS Chapters
315 291-34 to 291-36 at no increase in contract price or contract time. The
316 Engineer may refuse entry to or demand the removal from the worksite of any
317 vehicle that exceeds the maximum legal total gross weight and shall inform the
318 appropriate enforcement authority of the violation.

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END OF SECTION 104