

bid documents will be borne by the Department. The Department will provide escrow instructions to the document depository consistent with this clause.

- H. **Payment.** There will be no separate payment for the cost of compilation of data, the sealed container, or verification of the bid documentation. All costs shall be included in the Contract bid price.

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Subsection 103.09 Withdrawal of Bid. If, at any time, after the acceptance of bids by the Department and before full execution of the Contract the low bidder determines a need to withdraw their bid, they shall put the request in writing to the Department's representative stating their reason(s) for such withdrawal. The Department reserves the right to accept/reject the bidder's request to withdraw upon review of the merits. The Department reserves the right to retain the bid bond or certified check in full or in part as liquidated damages. The Department may then proceed to the next lowest responsive bidder, or reject all proposals and re-advertise for new proposals.

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Section 104 - Scope of Work

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104.01 Intent of Contract. The Contractor shall complete the work described, furnishing all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the Contract.

104.02 Signs. The Contractor shall, with the Engineer, inventory all signs (i.e., Traffic, Bus Stops, Street Names, etc.) within the limits of the Contract. Necessary bus stops and traffic signs shall be maintained in operation during construction, and all other signs shall be properly stored. The Contractor is responsible for any loss or damage to signs.

104.03 Bus Stops. Bus stops shall be maintained as close as possible to the original location by use of temporary roadway

materials during construction activity.

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104.04 Accident Notification. Notify the appropriate police agency and District Engineer immediately concerning any accidents which result in damage to property or cause personal injury.

104.05 Changes in the Character of Work. The Department reserves the right to, at any time prior to the completion of the Contract, issue plan revisions, make adjustments in Contract item quantities, or make such other alterations considered necessary to satisfactorily complete the Contract. A change will also be considered to have occurred when a major item of work, as defined elsewhere in the Contract, is increased in excess of 125% or decreased below 75% of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original Contract item quantity, or in case of a decrease below 75%, to the actual amount of work performed. Such changes will be issued in writing by the Engineer.

1. Such changes do not invalidate the Contract or release the Contract surety.
2. If as a result of such changes the Contractor requires additional time to complete the Contract, adjustments in the Contract time will be made under [Subsection 108.07](#).
3. Payment for changes will be made as provided in [Subsection 109.03](#) or [109.04](#). Payment shall exclude any amount for loss of anticipated profits alleged to result from the change.
4. Adjustments to the unit price of a Contract item based on increases or decreases in Contract quantities will be considered only on major items and then only for the increase in excess of 125% or decrease below 75% of the original bid quantity. The increase or decrease in the unit price of a Contract item shall apply only to that portion in excess of 125% of the Contract quantity. In cases of a decrease below 75% of Contract quantity, the increase and decrease in the unit price shall apply to the entire quantity. The amount of the increase or decrease in the unit price will be determined in accordance with [Subsection 109.04](#).
5. When payment for the Contract work cannot be agreed upon by the Contractor and the Department prior to starting such work ordered, the Department may direct the Contractor to perform the work under the Force Account provisions of [Subsection 109.04](#). The Contractor will proceed immediately with work so ordered and such direction shall neither invalidate the Contract, nor release the surety.

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104.06 Differing Site Conditions. If differing site conditions are

encountered at the work site, the Contractor shall promptly notify the Department as specified in [Subsection 104.08](#). No further disturbance of the site or performance of the affected work is to be done after the alleged differing site conditions are noted unless directed in writing by the Engineer.

Upon written notification, the Engineer will investigate the conditions and determine if they differ materially as defined in [Subsection 101.26](#). If so, and the conditions cause an increase or decrease in the cost or time required for the Contractor to perform the work, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will notify the Contractor whether or not an adjustment of the Contract is warranted.

No Contract adjustment resulting in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice as specified in [Subsection 104.08](#).

Adjustments in the Contract price will be made under [Subsection 109.04](#), and adjustments in Contract time will be made under [Subsection 108.07](#).

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104.07 Suspension of Work. The Engineer may suspend the work in whole or in part by written order to the Contractor, for any reason or condition which would be in the best interest of the Department. The Engineer may also suspend the work when the Contractor fails to perform any provisions of the Contract. The Contractor shall immediately comply with the written order of the Engineer to suspend the work wholly or in part. The work shall be resumed when conditions are favorable as determined by the Engineer or when methods are corrected as approved in writing by the Engineer.

1. If the delay resulting from the written suspension order is considered unreasonable, the Contractor shall submit a written request to the Engineer providing the reasons and justification for any Contract adjustment considered necessary as a result of the suspension. The justification for a time extension shall follow the notification and documentation procedures defined in [Subsection 108.07](#). The written request for the Contract adjustment must be submitted to the Engineer in writing seven calendar days following receipt of the Engineer's notice to resume work. An adjustment will not be made unless the request has been submitted within the prescribed time.
2. There will be no adjustment under the provisions of this Subsection if the work performance would have been suspended or delayed by any other cause, under any other terms or conditions of the Contract.
3. The request for an adjustment will be reviewed by the Engineer. If there is Agreement that 1) there has been an increase in the Contract performance cost or time as a

result of the suspension, and 2) the suspension was caused by conditions beyond the control and not the fault of the Contractor or those parties for whom the Contractor is responsible, adjustments in the Contract price, excluding profit, will be made according to [Subsection 109.04](#). Any adjustments to Contract time will be made according to [Subsection 108.07](#).

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104.08 Notification of Differing Site Conditions, and Extra Work.

The Contractor shall immediately notify the Engineer of alleged changes to the Contract due to differing site conditions, extra work, altered work beyond the scope of the Contract, or action(s) or lack of action(s) taken by the Department that have allegedly changed the Contract terms and conditions.

- A. No further work is to be performed or Contract costs incurred on the change after the date the change occurs unless directed otherwise by the Engineer
- B. Within seven days of the initial notification, the Contractor shall provide the following applicable information to the Engineer in writing:
 - 1. The date of occurrence and the nature and circumstances of the occurrence that constituted the alleged change.
 - 2. Name, title, and activity of each Department representative knowledgeable of the alleged change.
 - 3. Identify any documents and the substance of any oral communications involved in the alleged change.
 - 4. Basis for an allegation of accelerated schedule performance, if applicable.
 - 5. Basis for an allegation that the work is not required by the Contract, if applicable.
 - 6. Particular elements of Contract performance for which additional compensation may be sought under this Section including:
 - a. Contract item(s) that have been or may be affected by the alleged change.
 - b. Labor or materials, or both, that will be added, deleted, or wasted by the alleged change and what equipment will be idled or

required.

- c. Delay and disruption to the manner and sequence of performance that has been or will be caused by the alleged change.
- d. Estimated adjustments to Contract price(s), delivery schedule(s), staging, and Contract time necessary due to the alleged change.
- e. Estimate of the time within which the Department must respond to the notice to minimize cost, delay, or disruption of performance.

The failure of the Contractor to provide required notice in accordance with this Subsection shall constitute a waiver of any and all entitlement to adjustments in the Contract price or time as a result of the alleged change.

- C. Within ten days after the receipt of notice, the Engineer will respond in writing to the Contractor to:
 - 1. Confirm that a change occurred and, when necessary, direct the method and manner of further performance.
 - 2. Deny that a change occurred and, when necessary, direct the method and manner of further performance.
 - 3. Advise the Contractor that additional time is required to evaluate the allegation or adequate information has not been submitted to decide whether 1. or 2. above applies, and indicate the needed information and date it is to be received by the Engineer for further review.

Any adjustments made to the Contract shall not include increased costs or time extensions for delays resulting from the Contractor's failure to provide requested additional information in accordance with this clause.

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104.09 Maintaining Traffic. The Contractor shall keep all roads open to all traffic during the construction. Where provided in the Contract or approved by the Engineer, traffic may be bypassed over an approved detour route. The Contractor shall keep the section of the Project being used by public traffic in a condition that safely and adequately accommodates traffic. The Contractor shall furnish

erect, and maintain barricades, drums, warning signs, delineators, striping, and flaggers, in accordance the Traffic Control Manual. The Traffic Control Manual may be obtained from the Contract Administration Office.

The Contractor shall bear all expense of maintaining the section of road undergoing improvement including all temporary approaches or crossings and intersections with trails, roads, streets, businesses, parking lots, residences, garages, farms, and other features as may be necessary. Snow removal will not be required of the Contractor. Payment for the furnishing, installation, and maintenance of traffic control will be as provided in Division 700.

If the Contractor does not complete the Work within the Contract completion time (including approved extension time), the cost of all traffic control items to maintain traffic as required in accordance with the Traffic Control Manual (including all subsequent revisions up to the date of the advertisement of the Project), the Plans, and Specifications shall be borne by the Contractor to complete the remaining work beyond the Contract time. Traffic control items shall include but not be limited to warning lights, warning signs, barricades, plastic drums, portland cement concrete safety barrier, flaggers, police officers, arrow panel, message board, and portable impact attenuator.

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104.10 Rights In and Use of Materials Found on the Work. The Engineer may authorize the Contractor's use of materials found in the excavation. Payment will be made both for the excavation of such materials at the corresponding Contract unit price and for the Contract item for which the excavated materials are used. The removed material shall be replaced if necessary with acceptable material at no cost to the Department. Do not excavate or remove any material from within the highway location that is not within grading limits without written authorization from the Engineer.

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104.11 Restoration of Surfaces Opened by Permit. The right to construct or reconstruct any utility service in the highway or street or to grant permits to construct or reconstruct is, at any time during construction, hereby expressly reserved by the Department. The Contractor shall not be entitled to any damages for unauthorized digging or any delay occasioned thereby.

Any individual, firm, or corporation wishing to make an opening in the highway must secure a permit from the Department. The Contractor shall allow parties bearing such permits and only those parties, to make openings in the highway. When ordered, the Contractor shall make all necessary repairs due to such openings and such necessary work will be paid for as extra work or as provided in the Contract and will be subject to the same Contract conditions as the original work performed.

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104.12 Value Engineering Proposals (VEP) by the Contractor.

Any cost savings generated to the Contract as a result of VEP offered by the Contractor and approved by the Department will be shared by the Contractor and the Department on a 50-50 basis.

Bid prices shall not to be based on the anticipated approval of a VEP. If the VEP is rejected, the Contract is to be completed at the Contract bid prices.

If the Department determines that the time for response indicated in the submittal under B.5. below is insufficient for review, the Contractor will be promptly notified. Based on the additional time needed by the Department for review and the affect on the Contractor's schedule occasioned by the added time, the Department will evaluate the need for a time extension to the Contract. The Contractor shall have no claim against the Department for delays to the Contract based on the failure to respond within the time indicated in B.5. below if additional information is needed to complete the review. Until the proposal is accepted by the Department, the Contractor shall remain obligated to the terms and conditions of the existing Contract.

- A. **General.** VEP contemplated are those that could produce a savings to the Department without impairing essential functions and characteristics of the facility, including but not limited to, service life, economy of operation, ease of maintenance, desired appearance, and safety.
- B. **Submittal of Proposal.** The following materials and information shall be submitted with each proposal.
 1. A statement that the proposal is submitted as a VEP.
 2. A description of the difference between the existing Contract and the proposed change, and the cooperative advantages and disadvantages of each, including effects on service life, economy of operations, ease of maintenance, desired appearance, and safety.
 3. A complete set of the Plans and Specifications showing the proposed revisions relative to the original Contract features and requirements.
 4. A complete analysis indicating the final estimated costs and quantities to be replaced by the VEP compared to the new costs and quantities generated by the VEP.
 5. A statement specifying the date by which a change order adopting the VEP must be executed to obtain the maximum cost reduction during the remainder of the Contract.
 6. A statement detailing the effect the VEP will have

on the time for completing the Contract.

7. Ad results. If the VEP was previously submitted on another Department project, indicate the date, Contract number, and the action taken by the Department.
- C. **Conditions.** VEP will be considered only when all of the following requirements are met:
1. VEP, approved or not approved by the Department, apply only to the ongoing contract(s) referenced in the VEP and become the property of the Department. The VEP shall contain no restrictions imposed by the Contractor on their use or disclosure. The Department shall have the right to use, duplicate, and disclose in whole or in part any data necessary for the use of the VEP. The Department retains the right to use any VEP or part thereof on other projects without obligation to the Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.
 2. If the Department is already considering certain revisions to the Contract or has approved certain changes in the Contract for general use that are subsequently incorporated in a VEP, the Department will reject the VEP and may proceed without obligation to the Contractor.
 3. The Contractor shall have no claim against the Department for costs or delays due to the Department's rejection of a VEP, including but not limited to, development costs, loss of anticipated profits, increased material or labor costs.
 4. The Engineer will be the sole judge as to whether a VEP qualifies for consideration and evaluation. It may reject any VEP that requires excessive time or costs to review, evaluate, or investigate, or that is not consistent with the Department's design policies and criteria for the Project.
 5. The Department will reject all or any portion of work performed under an approved VEP if unsatisfactory results are obtained. The Department may direct the removal of such rejected work and require the Contractor to proceed in accordance with the original Contract requirements without

reimbursement for work performed under the proposal, or for its removal. Where modifications to the VEP are approved to adjust to field or other conditions, reimbursement will be limited to the total amount payable for the work at the Contract bid prices as if it were constructed under the original Contract requirements. The rejection or limitation of reimbursement shall not constitute the basis of any claim against the Department for delay or for other costs.

6. The proposed work shall not contain experimental features but shall be proven features that have been used under similar or acceptable conditions on other projects or locations acceptable to the Department.
7. VEP will not be considered if equivalent options are already provided in the Contract. The VEP must be sufficient to warrant a review and processing.
8. A proposal changing the type or thickness of the pavement structure will not be considered.
9. Additional information needed to evaluate VEP will be provided in a timely manner. Untimely submittal of additional information will result in rejection of the VEP. Where design changes are proposed the additional information could include results of field investigations and surveys, design computations, and field change sheets.

D. **Payment.** If the VEP is accepted, the changes and payment will be authorized by a change order. Reimbursement will be made as follows:

1. The changes will be incorporated into the Contract by changes in quantities of unit bid items, and/or new agreed price items, as appropriate, under the Contract.
2. The cost of the Value Engineering work as determined from the changes will be paid directly. In addition, the Department will pay the Contractor 50% of the savings to the Department as reflected by the difference between the cost of the revised work and the cost of the related construction required by the original Contract computed at Contract bid prices.
3. The Contractor's costs for development, design, and implementation of the VEP are not eligible for reimbursement.
4. The Contractor may submit VEP for an approved

subcontractor. Subcontractors may not submit a VEP except through the Contractor.

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104.13 Final Cleaning of Project Site. Before final inspection of the Project, the Project, publicly owned borrow source, and all areas affected by the Contractor in connection with the work within the right-of-way shall be cleaned of all rubbish, excess materials, temporary structures, and equipment. All surfaces and slopes, whether old or new, shall be trimmed to the cross-section, all grass and weeds, which are taller than 60 (150 mm), shall be cut, and all parts of the work shall be left in an acceptable condition. The cost of the final cleanup shall be incidental to the Contract and no separate payment will be made.

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104.14 Contractor's Responsibility for Work. Until the Contractor has achieved substantial completion, the Contractor shall have the sole and absolute responsibility for the work and to provide for the protection and safety of employees of the Department, Contractor, subcontractors, suppliers, and members of the general public. In no case, including but not limited to, supervisory acts or administration of the Contract by the Engineer, will the Contractor be relieved of the responsibility to indemnify the Department pursuant to the provisions of the Contract.

Rebuild, repair, restore, and make good all losses, injuries, or damage to any portion of the work under the control of the Contractor or due to his/her fault or inactivity, at no cost to the Department. Rebuild, repair, restore, and make good all losses, injuries, or damage to any portion of the work, not under the control of the Contractor, under agreed unit prices or as extra work under Subsection 109.04. "Items not under the control of the Contractor" shall be defined for purposes of this Subsection as Acts of God such as earthquakes, tidal waves, tornadoes, or hurricanes; catastrophic conditions such as hazardous waste materials spills, explosions, etc., or acts of the public enemy or of governmental authorities.

In case of the suspension of work the Contractor shall be responsible for the Project and shall take such precautions as may be necessary to prevent damage to the Project, provide for normal drainage and normal traffic operations, and to erect any necessary temporary structures, signs, or other facilities. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under the Contract, and shall take adequate precautions to protect new tree growth and other vegetative growth against injury.

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Section 105 - Control of Work

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