

STATE**OF****TENNESSEE**

October 25, 2012

Project No.: BH-I-40-8(158), 45002-3144-94

County: Jefferson

Contract Number: CNL170

SPECIAL PROVISION**REGARDING****PROJECT COMPLETION, NO EXCUSE BONUS AND DISINCENTIVE**

This project shall be completed IN ITS ENTIRETY on or before December 31, 2015. Once long term lane closures begin, the contractor shall complete all work requiring these closures (Traffic Control Stages 1A through 2E) and open all lanes for the safe and convenient use of the travelling public within 730 calendar days or by September 30, 2015, whichever is earliest. The remaining work should then primarily be the removal of the underdeck protection shielding.

All lane closures must be approved in advance by the Engineer. A minimum of seven days notice must be provided in advance of any closure. Temporary lane closures will be allowed during Traffic Control Stage 0 (installation of the underdeck protection system and preliminary steel work) and Traffic Control Stage 2F (removal of the underdeck protection system). Stage 0 must be completed prior to proceeding with the long term lane closures in subsequent stages. All work requiring temporary lane closures, including traffic control phase shifts, shall be performed between the hours of 7:00 PM and 6:00 AM, Sunday through Thursday nights. No temporary lane closures will be allowed during Holidays or Holiday weekends or other restricted periods as defined in the plans and specifications. For each hour or portion thereof, which any traffic lane remains closed in conflict with the restricted periods, the sum of \$1,000 per hour per lane shall be deducted from monies due the Contractor, not as a penalty, but as liquidated damages.

The Department will pay the Contractor a "NO EXCUSE BONUS" in the amount of \$500,000.00 if the work requiring long term lane closures (Traffic Control Stages 1A through 2E) is completed, in accordance with the plans, within the time periods shown in the "NO EXCUSE BONUS" Schedule of Payment and subject to the conditions precedent set forth herein. For purposes of the calculation and the determination of entitlement to the "NO EXCUSE BONUS", the "NO EXCUSE BONUS" time periods will not be adjusted for any reason, cause or circumstance whatsoever, regardless of fault, save and except in the instance of a catastrophic event (e.g., tornado, earthquake or declared state of emergency) directly and substantially affecting the Contractor's operations on the Contract.

The parties to this contract 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, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, 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 "NO EXCUSE BONUS" time periods as shown in the "NO EXCUSE BONUS" Schedule of Payment. 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 within the "NO EXCUSE BONUS" time periods as shown in the "NO EXCUSE BONUS" Schedule of Payment, 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 (e.g., tornado, earthquake or declared state of emergency) directly and substantially affecting the Contractor's operations on the Contract, the Contractor and the Department shall attempt to agree as to the number of calendar days to extend the "NO EXCUSE BONUS" time periods as shown in the "NO EXCUSE BONUS" Schedule of Payment. In the event the Contractor and Department are unable to agree to the date to extend the "NO EXCUSE BONUS" time periods as shown in the "NO EXCUSE BONUS" Schedule of Payment, the Department shall unilaterally determine the number of calendar days to extend the "NO EXCUSE BONUS" time periods as shown in the "NO EXCUSE BONUS" Schedule of Payment 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.

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

As conditions precedent to the Contractor's entitlement to any "NO EXCUSE BONUS" the Contractor must:

- (1) Complete all work requiring long term lane closures in Traffic Control Stages 1A through 2E and reopen all lanes for the safe and convenient use of the travelling public.
- (2) The Contractor shall notify the Department in writing, within 30 days of reopening all lanes to traffic, that the Contractor elects to be paid the "NO EXCUSE BONUS" as shown in the "NO EXCUSE BONUS" Schedule of Payment which the Contractor is eligible to be paid based on the actual date all lanes are open to traffic, 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 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 complete the work requiring long term lane closures on or before any of the “NO EXCUSE BONUS” periods as shown in the “NO EXCUSE BONUS” Schedule of Payment, or should the Contractor, having done so, fail to timely request the “NO EXCUSE BONUS” for any reason, and including but not limited to the Contractor choosing not to fully waive, release and acknowledge satisfaction as set forth in (2) above, the Contractor shall have no right to any payment whatsoever under this provision. As to any Contract work provided for herein, the Contractor will remain responsible for all such work and the continued maintenance thereof until such date as the Department finally accepts all work under the Contract in accordance with the Standard Specifications, and without regard to whether the Department has provided written verification of completion or not, and without regard to whether any “NO EXCUSE BONUS” was earned or elected hereunder and shall be subject to the deduction from monies due the Contractor as shown below.

Any “NO EXCUSE BONUS” earned by the Contractor shall be waived if the Contractor or any of the Contractor’s Subcontractors or Suppliers experience a fatality on the project.

In the event the Contractor elects to exercise the “NO EXCUSE BONUS” payment provision, should this provision conflict with any other provision of the Contract, the Contract shall be interpreted in accordance with this provision.

In order to expedite construction of this project to minimize inconvenience to the traveling public and reduce the time of construction, the Department establishes the following “NO EXCUSE BONUS” Schedule of Payment and DISINCENTIVE:

“NO EXCUSE BONUS” Amount: \$500,000.00

“NO EXCUSE BONUS” Schedule of Payment		
If work requiring long term lane closures is completed in its entirety within:		
Closure Period #1	550 Calendar Days	100% Payment (\$500,000.00)
Closure Period #2	640 Calendar Days	50% Payment (\$250,000.00)
Maximum Closure Period Allowed	730 Calendar Days	0% Payment

DISINCENTIVE		
After	730 Calendar Days or by September 30, 2015 (whichever is earliest)	Deduct \$2,500.00 per calendar day

Extension of time on the DISINCENTIVE DATE will not be given unless extraordinary circumstances occur. TDOT will make a determination if the circumstances impacted the critical path and an extension of the DISINCENTIVE DATE is warranted in accordance with Subsection 108.06 of the Standard Specifications.

Payment or deductions will be made under the following items on progress estimates:

<u>Item No.</u>	<u>Pay Item</u>	<u>Pay Unit</u>
108-01.01	No Excuse Bonus	Lump Sum
108-10.11	Disincentive Deduction	Calendar Day

The \$2,500/day disincentive deduction includes any liquidated damages that may be incurred for failure to complete the work on time. No additional deduction will be made for liquidated damages.