DRAFT OF 105.13 (based on Cost. Memo 1-00 & KAR 603 2:015 Sections 9-10) CLAIMS FOR ADJUSTMENTS AND DISPUTES

START

The process for resolving project claims is mandated by the Kentucky Administrative Regulations (KAR 603 2:015 Sections 9 &10) and Kentucky Revised Statutes (KRS 13B.140)

Should project issues remain unresolved the following may be the course of action by the contract parties.

The Resident Engineer and Contractor should attempt to resolve project disputes as they arise.

If the claim involves final quantities and payments, the Contractor must submit a report detailing the dollar amount of the claim, the basis of the claim, and any supporting documentation to the Section Engineer no later than 60 days after receipt of form TC 63-34, “Final Release,” as sent to the Contractor by the Cabinet.

If the claim involves extra work, the Contractor must submit a report detailing the dollar amount of the claim, the basis of the claim, and any supporting documentation to the Section Engineer no later than 30 days after the receipt of form TC 63-44, “Final Inspection and Formal Acceptance Report of Completed Construction.”

NO

Does the claim involve extra work?

END

This provision does not establish a claim contrary to the terms of Subsection 104.02.

If the Engineer determines that the claim is justified, the Department will pay for it as Extra Work as provided in Subsection 104.03.

START

The Contractor must submit this form to the Section Engineer within 10 days of the date that the Contractor knew of or should have known of the events causing the claim

Claims will not be considered if the TC 63-32 is not received as required or if it is received after the 10-day deadline.

Is the TC 63-32 form received by the deadline?

If the claim is for extra work as defined in the Standard Specifications applicable to the project, TC 63-32 must be submitted prior to beginning the disputed work

NO

This process is initiated by the Contractor notifying the Section Engineer of the intent to file a claim through the submission of form TC 63-32 “Notice of Changed Condition/Disagreement.”

END

YES

RED INDICATES ACTION REQUIRED BY SECTION ENGINEER

Does the Engineer determine that the claim is justified?

YES

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This acknowledgement must be sent by the Section Engineer within 7 days of receiving form TC 63-32 (See Construction Memo Jan 2000)

The Section Engineer will respond to the Contractor notifying them of the receipt of notice of the claim by submitting form TC 63-33 “Acknowledgement of Notice of Changed Condition/ Disagreement” to the Contractor.

ORANGE CALLS ATTENTION FOR THE SECTION ENGINEER

NO

It is in the Contractor’s interest to complete the following as soon as possible for a timely resolution

YES

Once the proper forms are submitted for the particular work involved in the claim, the Contractor must complete the work as directed in the construction documents and by the Engineer.

This work should be carefully tracked by both parties with costs tracked according to Subsection 109.04

The Contractor’s compliance with this provision and the Engineer’s accounting of the costs does not validate the claim.

Note: The previous Administrative Claims Process must be exhausted prior to the Contractor requesting an Administrative Hearing.

Upon the submission of the claim materials by the Contractor, the Section Engineer and District T.E.B.M. will have 60 days to attempt to settle the claim with the Contractor.

END

YES

Is the claim settled?

The Contractor submits a formal claim.

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NO

Prior to making the final determination, the Director will hold an informal conference with the Contractor for the purpose of reaching a resolution to the claim or identifying issues needing resolution.

Is the claim settled?

Does the Contractor wish to request a hearing?

Note: At this point of the process, the Section Engineer should notify the Central Office Field Engineer and Contract Administration Branch of the claim.

If the claim is not settled, it will be submitted to the Director of the Division of Construction who will have 90 days to make a final determination.

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YES

END

NO

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Should the Section Engineer or Director fail to meet the previously mentioned deadlines, their inaction indicates a denial of the claim.

END

NO

YES

NO

Do the parties mutually agree to participate in mediation?

YES

Upon a written agreement of both parties, the claim could be mediated through a formal nonbinding mediation with a mutually agreed upon mediator.

The cost for this action will be equally shared.

END

If the conference is unsuccessful, the Director will notify the Contractor of the Cabinet’s decision (the final determination) and the Contractor’s right to a hearing or Circuit Court

Does the Section Engineer or Director fail to meet their deadlines?

YES

NO

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Should the Director fail to submit a final decision within the deadline stipulated previously, the Cabinet will bear the costs associated with the hearing officer should such an event occur.

If either party terminates the mediation, the Contractor may still request a hearing or Circuit Court appearance according to KRS Chapter 13B and has 30 days from the notice of termination of the mediation to make such a request.

If the Contractor wishes to request a hearing/go to Circuit Court, this request must be within 30 days of notification of the Cabinet’s final decision and should be in accordance with KRS Chapter 13B.

SECTION ENGINEER TIMELINE FOR DRAFT SPECIFICATION 105.13 CLAIMS FOR ADUSTMENT AND DISPUTES

RED INDICATES ACTION REQUIRED BY SECTION ENGINEER

Note: Also, prior to beginning any disputed Extra Work (as defined in the standard specifications)

2. The claims process is initiated by the Contractor notifying the Section Engineer of the intent to file a claim through the submission of form TC 63-32, “Notice of Changed Condition/ Disagreement” within 10 days of the date that the Contractor knew of or should have known of the events causing the claim or if the claim is for extra work as defined in the standard specification applicable to the project, the TC 63-32 must be submitted prior to beginning the disputed work.

ORANGE CALLS ATTENTION FOR THE SECTION ENGINEER

3. The Section Engineer will respond to the Contractor notifying them of the receipt of notice of the claim by submitting form TC 63-33 “Acknowledgement of Notice of Changed Condition/ Disagreement to the Contractor. This acknowledgment must be send by the Section Engineer within 7 days of receiving form TC 63-32.

4. Once the proper forms are submitted for the particular work involved in the claim, the Contractor must complete the work as directed in the construction documents and by the Engineer. This work should be carefully tracked by both parties with costs tracked according to Subsection 109.04

5. Once work involved in the claim is complete, the Contractor submits a formal claim and the Engineer determines if the claim is justified. If so, the Department will pay for it as Extra Work as provided in Subsection 104.03.

N/A

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Immediately

7 Days

10 Days

1. Event giving rise to the claim.

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6.1 If the claim involves extra work, the Contractor must submit a report detailing the dollar amount of the claim, the basis of the claim, and any supporting documentation to the Section Engineer no later than 30 days after the receipt of form TC 63-44, “Final Inspection and Formal Acceptance Report of Completed Construction.”

30 Days from receipt of TC 63-44

N/A

6. If the Engineer does not determine the claim to be justified.

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7. Upon the submission of the claim materials by the Contractor, the Section Engineer and District T.E.B.M. will have 60 days to attempt to settle the claim with the Contractor. At this point in the process, the Section Engineer should notify the Central Office Field Engineer and Contract Administration Branch of the claim.

8. If the claim is not settled, it will be submitted to the Director of the Division of Construction who will have 90 days to make a final determination. Prior to making a final determination, the Director will hold and informal conference with the Contractor to try to reach a settlement or identify issues needing resolution. If the conference does not successfully settle the claim, the Director will make a final determination.

6.2 If the claim involves final quantities and payments, the Contractor must submit a report detailing the dollar amount of the claim, the basis of the claim, and any supporting documentation to the Section Engineer no later than 60 days after receipt of form TC 63-34, “Final Release,” as sent to the Contractor by the Cabinet.

60 Days

60 Days from receipt of TC 63-34

N/A

Note: Upon a written agreement of both parties, the claim could be mediated through a formal, nonbinding mediation with a mutually agreed upon mediator. The cost for this action will be shared equally. If either party terminates the mediation, the Contractor may still request a hearing or Circuit Court appearance according to KRS Chapter 13B and has 30 days from the notice of termination of the mediation to make such a request.

<= 90 Days Days

10. If the Contractor wishes to request a hearing or Circuit Court appearance, this request must be within 30 days of notification of the Cabinet’s final decision and should be in accordance with KRS Chapter 13B.

9. If the conference is unsuccessful and the Director makes a final determination, the Director will notify the Contractor of the Cabinet’s decision and their right to an Administrative Hearing or Circuit Court appearance according to KAR 603 2:015 Section 10

30 Days

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| Event | Contractor Action | Department Action | Time Limit from Event |
| 1. Dispute/Issue on the jobsite | Contractor and Resident Engineer should work together to resolve disputes as they arise. | |  |
| 2. Contractor knows or should have known of events causing claim | The claims process is initiated by the Contractor notifying the Resident Engineer of the intent to file a claim by submitting TC  63-32 "Notice of Changed  Condition/Disagreement." |  | 10 Days; Prior  to beginning any disputed Extra Work (as define in the standard  specifications) |
| 3. Resident  Engineer receives form TC 63-32 |  | The Resident Engineer must respond to form TC  63-32 by submitting TC  63-33 "Acknowledgement of Notice of Changed Condition/Disagreement'' to the Contractor. | 7 Days |
| 4. TC 63-32 and TC 63-33 submitted | The Contractor must complete the work as directed by the construction documents and the Engineer. Both parties should carefully track and document the work with costs tracked according to specification 109.04. | | Immediately |
| 5. Work involved in the claim is complete |  | The Contractor submits a formal claim. |  |
| 6. The Resident Engineer determines the claim is not justified | 1. If the claim involves  extra work, the Contractor must submit a report detailing the dollar amount of the claim, the basis of the claim, and any supporting documentation to the Resident Engineer no later than 30 days after the  receipt of form TC 63-44,  "Final Inspection and Formal Acceptance Report of Completed Construction."  2. If the claim involves final quantities and payments, the Contractor must submit a report detailing the dollar amount of the claim, the basis of the claim, and any supporting documentation  to the Resident Engineer no |  | 30 Days from  receipt of TC  63-44  60 days from receipt of TC 63-34. |

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|  | later than 60 days after receipt of form TC 63-34, "Final Release," as sent to the Contractor by the Cabinet. |  |  |
| 7. Submission of the claim materials to the Resident Engineer by the Contractor |  | At this point in the process, the Resident Engineer should notify the Central Office Field Engineer and Contract Administration Branch of the claim. The Resident Engineer and the District TEBM will attempt to settle the claim with the Contractor. | 60 Days |
| 8. The claim is not settled in 60 days |  | The Director of the Division of Construction will hold an informal conference with the Contractor to try to reach a settlement or identify issues needing resolution. If the conference does not successfully settle the claim, the Director will  make a final determination. | 90 Days |
| 9. Conference unsuccessful and the Director makes a final determination regarding the  claim |  | The Director will notify the Contractor in writing of the Cabinet's decision and of the Contractor's right to an Administrative Hearing or to Circuit Court case. |  |
| 10. Contractor receives written notice of the Cabinet’s decision and wishes to have an Administrative Hearing or a Circuit Court Case. | The Contractor requests a hearing pursuant to KAR  603 2:015 Section 10 or a Circuit Court case. |  | 30 Days |

\*\*The parties of the claim may mutually agree to have the claim mediated by a mutually agreed

upon mediator with costs shared equally. If mediation is terminated the Contractor still has the right to a hearing pursuant to KAR 603 2:015 Section 10.

\*\*This process is governed by KAR 603 2:015 Section 9 and KRS 13B.140.