

8-13.1 Incentive - Disincentive.
(REV 3-8-99) (7-00)

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, an incentive - disincentive provision is established for the Contract. The total incentive payment or disincentive deduction shall not exceed \$ _____.

The Department will pay the Contractor an incentive payment in the amount of \$ _____, for each calendar day the actual completion date precedes the Original Contract Time and subject to the conditions precedent set forth below. The term "Original Contract Time" as used in this Article will mean the number of calendar days established for completion of the work in the Contract on the date the Contract was executed. The term "calendar day" as used in this Article will mean every day shown on the calendar. Calendar days will be consecutively counted from commencement of Contract Time regardless of weather, weekends, holidays, suspensions of Contractor's operations, delays or other events as described herein. For purposes of the calculation and the determination of entitlement to the incentive payment stated above, the Original Contract Time 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 Original Contract Time for purposes of calculation of the incentive payment 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 prior to expiration of the Original Contract Time, 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 Original Contract Time so that such extended Original Contract Time will be used in calculation of the incentive payment. In the event the Contractor and Department are unable to agree to the number of Calendar Days to extend the Original Contract Time, the Department will unilaterally determine the number of calendar days to extend the Original Contract Time 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 incentive payment provision except as is expressly set forth in this Article.

As conditions precedent to the Contractor's entitlement to any incentive the Contractor must:

- (1) Actually complete the Contract and obtain final acceptance by the Department prior to expiration of the Original Contract Time.
- (2) The Contractor shall notify the Department in writing, within 30 days after final acceptance of the Contract by the Department, that the Contractor elects to be paid the incentive

payment which the Contractor is eligible to be paid based on the actual final acceptance 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, 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 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 Contract Time, 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 actually complete the Contract and obtain final acceptance by the Department prior to expiration of the Original Contract Time, or should the Contractor, having timely completed the Contract and obtained final acceptance by the Department prior to expiration of the Original Contract Time but having failed to timely request the incentive payment 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 Article. Notwithstanding the Contractor's election or non-election of the incentive under this provision, the disincentive provision applies to all circumstances where the work in the Contract is not finally accepted by the Allowable Contract Time.

Completion and acceptance of the Contract for purposes of this Article shall be in accordance with 5-11, with the sole exceptions being the conditional acceptance period of movable bridges in accordance with 465-9.

Should the Contractor fail to complete the Contract on or before expiration of the Allowable Contract Time, as adjusted in accordance with the provisions of 8-7.3, the Department shall deduct \$_____ for each calendar day completion exceeds the Allowable Contract Time, from the monies otherwise due the Contractor. The term "Allowable Contract Time" as used in this Article shall mean the Original Contract Time plus adjustments pursuant to 8-7.3. This deduction shall be the disincentive for the Contractor's failing to timely complete the Contract. Article 8-10 relating to liquidated damages remains in effect and is applicable.

In the event the Contractor elects to exercise this incentive payment provision, should this provision conflict with any other provision of the Contract, the Contract shall be interpreted in accordance with this provision.