

**8-13.1 Incentive - Disincentive.
(REV 8-8-02) (1-03)**

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, incentive - disincentive provisions are established for the Contract Work Items described below. The total combined incentive payment(s) or disincentive deduction(s) shall not exceed \$ _____.

Contract Work Item	Incentive – Disincentive Completion Date	Incentive – Disincentive Daily Amount	Incentive – Disincentive Total Amount
Usage- describe work and tie to the plans	Alt 1 Calendar days from commencement of Contract Time. Alt 2 Date		
Example: Complete project in accordance with 5-11	Alt 1 Calendar days from commencement of Contract Time. Alt 2 Date		

The Department will pay the Contractor an incentive payment in the amount of the “Incentive-Disincentive Daily Amount” as set forth above for each calendar day the actual completion date of the “Contract Work Item” as set forth above precedes the “Incentive – Disincentive Completion Date” as set forth above, and as determined by the Engineer and subject to the conditions precedent set forth below. For purposes of the calculation and the determination of entitlement to the incentive payment stated above, the “Incentive-Disincentive Completion Date” 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 “Incentive – Disincentive Completion Date” for the purposes of calculation incentive payment as 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 by the Incentive-Disincentive Completion Date, 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 "Incentive-Disincentive Completion Date" so that such extended "Incentive-Disincentive Completion Date" 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 "Incentive-Disincentive Completion Date", the Department will unilaterally determine the number of calendar days to extend the "Incentive-Disincentive Completion Date" 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 was 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 except as is expressly set forth in this Article.

As conditions precedent to the Contractor's entitlement to any "Incentive-Disincentive" payment the Contractor must:

(1) Actually complete the "Contract Work Item" and obtain written verification of the actual completion date from the Engineer on or before the "Incentive-Disincentive Completion Date".

(2) The Contractor shall notify the Department in writing, within 30 days of receiving written verification of the actual completion date of the Contract Work Item by the Engineer per (1) above, that the Contractor elects to be paid the incentive payment which the Contractor is eligible to be paid based on the actual "Incentive-Disincentive Completion 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 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 actually complete the Contract Work Item and obtain written verification of the actual completion date from the Engineer prior to the Incentive - Disincentive Completion Date, or should the Contractor, having done so, fail 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 verified as completed by the Engineer in writing by the Allowable Incentive - Disincentive Completion Date.

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

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

As to any Contract Work Item provided for herein, the Contractor will remain responsible for all such work and the continued maintenance thereof until such date as the Department final accepts all Work under the Contract in accordance with 5-11, and without regard to whether the Department has provided written verification of the actual completion date or not, and without regard to whether any incentive was earned or elected hereunder.