

liquidated damages under the Contract, but the Department will not charge liquidated damages for any delay in the final completion of the Department’s performance of the work due to any unreasonable action or delay on the part of the Department.

**8-11 Release of Contractor’s Responsibility.**

The Department considers the Contract complete when the Contractor has completed all work and the Department has accepted the work. The Department will then release the Contractor from further obligation except as set forth in his bond, and except as provided in 5-13.

**8-12 Recovery of Damages Suffered by Third Parties.**

In addition to the damages provided for in 8-10.1 and 8-10.2 and pursuant to Section.337.18 of the Florida Statutes, when the Contractor fails to complete the work within the Contract Time or within such additional time that the Department may grant the Department may recover from the Contractor amounts that the Department pays for damages suffered by third parties unless the failure to timely complete the work was caused by the Department’s act or omission.

A damage recovery/user cost will be assessed against the Contractor if all tracks are not open to traffic during the times as shown in the RFP. Costs will be assessed beginning at the appropriate time as shown in the RFP and continue until all tracks are open as recorded by the Engineer. This assessment will be in the following amounts:

- First 15 minutes and under: \$1,750.00
- Each additional 15 minute period or portion thereof: \$1,750.00

At the discretion of the Engineer, damage recovery/user cost will not be assessed for failure to open tracks if such cause is beyond the control of the Contractor, i.e., catastrophic events, accidents not related or caused by the Contractor’s operations.

The Department will have the right to apply as payment on such damages any money which is due to the Contractor by the Department.

**8-13. Alternative Bidding.**

The following new Subarticles are added:

**8-13.1 “Bonus” Payment and Waiver of Contractor Claims.**

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, “Bonus” provisions are established for the Contract Work Items described below.

The Department will pay the Contractor a “Bonus” as follows:

| <b>Bonus/Disincentive Table</b>                           |                              |                     |                                |
|---|------------------------------|---------------------|--------------------------------|
| <b>Contract Work Item</b>                                 | <b>Bonus Completion Date</b> | <b>Bonus Amount</b> | <b>Disincentive</b>            |
| Project Completion as defined in section V.HH of the RFP. | August 30, 2010              | \$3,000,000         | \$50,000/day (maximum 60 days) |

| <b>Bonus/Disincentive Table</b>   |                              |                     |                                  |
|---|------------------------------|---------------------|----------------------------------|
| <b>Contract Work Item</b>   | <b>Bonus Completion Date</b> | <b>Bonus Amount</b> | <b>Disincentive</b>              |
| Complete station platforms in Group 1: Fort Florida, Sanford, Lake Mary, Longwood, and Altamonte Springs as defined in Section V.HH of the RFP. | June 30, 2009                | \$450,000           | \$4,700/day<br>(maximum 96 days) |
| Complete station platforms in Group 2: Maitland, Winter Park, Florida Hospital, and Sand Lake as defined in Section V.HH of the RFP.            | September 30, 2009           | \$300,000           | \$3,400/day<br>(maximum 88 days) |
| Complete station platforms in Group 3: LYNX Central, Church, and Orlando Amtrak as defined in Section V.HH of the RFP.                          | December 30, 2009            | \$125,000           | \$1,300/day<br>(maximum 96 days) |
| Complete the Operations Control Center as defined in Section V.HH of the RFP.   | January 30, 2010             | \$350,000           | \$4,000/day<br>(maximum 88 days) |

The “Bonus” will be paid only if the “Contract Work Item” is completed as set forth above, and as determined by the Engineer, on or before the “Bonus Completion Date” as set forth above, and subject to the conditions precedent set forth below. For purposes of the calculation and the determination of entitlement to the “Bonus” stated above, the “Bonus 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 “Bonus Completion Date” 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 “Bonus 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 “Bonus Completion Date”. In the event the Contractor and Department are unable to agree to the number of calendar days to extend the “Bonus Completion Date”, the Department shall unilaterally determine the number of calendar days to extend the “Bonus Completion Date” reasonably necessary and due solely to such catastrophic event and the Contractor shall have no