

ARTICLE 108.03 PROSECUTION OF THE WORK For use on LCDOT let projects with Road Closures and Detours.

In the paragraphs below there are several references to calendar days, calendar date and/or detour duration. The terms need to be revised to fit the project e.g. if the detour duration is limited to calendar dates revise the text to remove allocated calendar days and specify the calendar dates.

The liquidated damages for the detour shall be the greater of the standard traffic control deficiency charge (Article 105.03 (b) Standard Specifications) or the Road User Cost (ADT x 1.2 passengers x \$10/hour x Travel Time Delta – Article 66-2.05 (c) BDE Manual). Check that the allowable duration (calendar days and/or dates) and Liquidated Damages below match the values on the detour plan sheets.

Additional text should be added to clarify/define what constitutes the road closure – e.g. when it begins, ends, what work needs to be completed etc...

Edit the red text below, e.g. days, dates, dollars etc. Delete the red notes from the Contract Specifications.

Effective: October 15, 2019

Road Closure & Detour: This project includes a road closure and corresponding detour. The purpose of this special provision is to ensure the least amount of disruption to motorists during the road closure and detour. The Contractor shall schedule his/her operations to minimize the impacts of the closure to the driving public to the greatest extent possible.

The Contractor will be allowed **XX calendar days for the road closure and detour.**

The Contractor shall note that this duration is based on an expedited work schedule.

Work to be completed: The following is the minimum work to be completed during the road closure and corresponding detour. Define the work to be completed e.g. construction of cofferdams, dewatering, culvert removal, culvert replacement, trench backfill and pavement replacement. Delete this note.

- Item 1
- Item 2
- Item 3

Failure to Complete the Work on Time: Should the Contractor fail to complete the work on or before the date of completion or within the calendar days allowed, the Contractor shall be liable to the Lake County Division of Transportation (LCDOT) in the amount of **\$XXXX.XX**, not as a penalty but as liquidated and ascertained damages for

each calendar day beyond the date of completion or number of calendar days allowed. Such damages may be deducted by LCDOT from any monies due the Contractor.

In fixing the damages as set out herein, the desire is to establish a certain mode of calculation for the work because LCDOT's actual loss, in the event of delay, cannot be predetermined, would be difficult of ascertainment, and a matter of argument and unprofitable litigation. This mode is an equitable rule for measurement of LCDOT's actual loss and fairly takes into account the loss of use of the roadway if the project is delayed in completion. LCDOT shall not be required to provide any actual losses to recover these liquidated damages provided herein, as these damages are very difficult to ascertain. Furthermore, no provision of this clause shall be construed as a penalty, as such is not the intention of the parties.

A calendar day is every day on the calendar and starts at 12:00 midnight and ends at the following 12:00 midnight, twenty-four hours later. No payment will be paid for any day less than twenty-four hours.

For example, a Contractor reopening a closed road at 9:00 am on Thursday when the allotted calendar day duration ended on Tuesday (same week) would be assessed two days of damages (Wednesday & Thursday).

Include the following for a detour with Incentive Payments. Do not include on projects with damages only.

Incentive Payment Plan: The nature of this project is such that this roadway cannot be safely and efficiently used until all specified work is complete. On this basis, the Contractor shall be entitled to an Incentive Payment for the completion of all work as set forth by the date of completion or within the allowed calendar days.

The Incentive Payment shall be paid at the rate of \$XXXX.XX per calendar day for each day of completion prior to the expiration of the XX calendar days allowed for the road closure and detour. The maximum payment under this incentive plan will be limited to XX calendar days. **The limit on Incentive Days should be agreed to during the plan review process – generally LCDOT likes 10 days.**

A calendar day is every day on the calendar and starts at 12:00 midnight and ends at the following 12:00 midnight, twenty-four hours later. No payment will be paid for any day less than twenty-four hours.

For example, a Contractor completing the work qualifying for the Incentive Payment at 6:00 pm on Tuesday with a completion day of Friday (same week) would qualify for three days of Incentive Payment (Wednesday, Thursday & Friday).

Should the Contractor be delayed in the commencement, prosecution, or completion of the work for any reason, there shall be no extension of the incentive payment calculation date even though there may be granted an extension of time for completion of the work unless significant extra work is added to the contract by LCDOT. No Incentive Payment will be made if the Contractor fails to complete the work before the specified date of completion, within the calendar days allowed or within the such extended time allowed by LCDOT. Failure of the Contractor to complete all work as required by the contract before expiration of the calendar days allowed shall release and discharge the County, LCDOT and all of its officers, agents, and employees from any and all claims and demands for the payment of any incentive amount or damages arising from the refusal to pay any incentive amount.

Include the following for paragraph if the project is part of a combination award.

If the contract is part of a combination award, no Incentive Payment shall commence on this contract which is part of the combination until all work on contracts which are part of the combination award has been completed.