
ATTACHMENT to Part 3 Article 5

PROVISION FOR INTERIM MILESTONES AND “NO EXCUSES” INCENTIVES

5.2.1 Final Completion Date. The Design-Builder shall finally complete the Work for all three elements of the Project (US 29 & Rio Road Grade Separated Intersection, US 29 Widening and Berkmar Drive Extension) in accordance with the Contract Documents no later than October 30, 2017 (referred to as both “Final Completion Date” and “Contract Time”).

5.2.2 Early Completion of Entire Project The Department will pay the Design-Builder a payment in the amount of One Million Three Hundred Thousand Dollars (\$1,300,000) to be known as a "no excuses" incentive payment if the Work under the Contract Documents for all three elements of the Project (US 29 & Rio Road Grade Separated Intersection, US 29 Widening, and Berkmar Drive Extension) is completed on or before July 1, 2017. For every day after July 1, 2017 the Design-Builder takes to complete the Work for all three elements of the Project, the “no excuses” incentive payment will decrease at a daily rate of Ten Thousand Seven Hundred and Forty Four Dollars (\$10,744). NO incentive payment will be paid for completing all Work after October 29, 2017. The "no excuses" incentive -payment will be paid in addition to and separate from the Contract Price. For the purposes of this provision, completion shall be defined as Final Acceptance of all Work completed in accordance with the Contract Documents for all three elements of the Project in accordance with the process described in Part 4, Section 6.6.~~23~~.

5.2.2.1 The Design-Builder ~~may elect to~~shall perform the Work for the US 29 & Rio Road grade Separated Intersection in the year 2016 ~~or 2017~~. The Department will pay the Design-Builder a “no excuses” incentive payment if the Work for the US 29 & Rio Road Grade Separated Intersection reaches an Interim -Milestone completion between May 23, 2016 and September 2, 2016. ~~However, there will be no incentive if the Design-Builder elects to defer starting Work on the US 29 & Rio Road Grade Separated Intersection until the year 2017.~~ The specific requirements related to the Interim Milestone completion dates and “no excuses” incentives are as follows:

5.2.2.2 Interim Milestone ~~One~~ – Early Completion of US 29 & Rio Road Grade Separated Intersection (May 23, 2016 and September 2, 2016) The Department will pay the Design-Builder a “no excuses” incentive payment for the targeted completion of the Interim Milestone ~~One~~ (as delineated below) if the Work for the US 29 & Rio Road Grade Separated Intersection reaches a milestone completion between May 23, 2016 and September 2, 2016. ~~If the Design-Builder elects to start Work between May 23, 2016 and September 2, 2016 for the US 29 & Rio Road Grade Separated Intersection a~~All Work shall be completed within this time period in accordance with this provision. If not completed, the Design-Builder will be assessed liquidated damages in accordance with Section 5.5.2 below. ~~The Design-Build may elect to defer starting Work on the US 29 & Rio Road Grade Separated Intersection between May 23, 2017 and September 2, 2017 with no incentive, in accordance with Section 5.2.2.3 (Interim Milestone Two).~~ Furthermore ~~t~~The 103 day US 29 & Rio Road Grade Separated Intersection closure period and associated operational requirements will only be permitted between May 23 and September 2 in the year 2016 ~~or 2017~~ in accordance with Part 2 Section 2.10.

The Interim Milestone Completion Work for the US 29 & Rio Road Grade Separated Intersection is defined as all lanes, local and through, open to traffic in ~~the near~~ final configuration such that the travelling public has unrestricted use* including, at a minimum, the substantial completion of the following items:

- Asphalt Pavement (at a minimum through intermediate course)
- Temporary or permanent line striping and directional arrows
- All directional and regulatory signing installed in accordance with the RFP Requirements for the Work completed. as appropriate for the level of completion
- Permanent or temporary signals installed and operational
- Loop detectors or other detector systems installed and operational
- Signal timing functional according to approved signal plans, whether temporary or permanent
- Bridge structure with all safety items installed
- ~~Curb and gutter installed~~
- Drainage structures and systems installed and functional
- Barrier Walls and attenuators where designed
- All turning and through movements open
- ~~Sidewalks complete~~
- Crosswalks marked and refuge areas accessible and functional whether temporary or permanent
- ~~Crosswalk curb cut ramps installed and functional~~
- ~~Above bridge lighting installed and operational~~
- Under-bridge lighting installed and operational
- Albemarle Square signal removed and right-in/right-out access controlled
- Fashion Square Mall signal removed and right-in/right-out access controlled
- Removal of temporary signs or signals not required for further operation
- Permanent stormwater management systems installed and functional

- Any under-bridge fire suppression and ventilation systems (where required) installed, tested, and functional
- Utilities relocated to their final position with no service interruptions required to complete the project

* Unrestricted use is defined as all lanes and movements (through and local) being available for use by vehicular traffic between the daytime hours of 6:00 am and 9:00 pm. Nighttime lane closures will be allowed to complete all work in accordance with the allowable lane closure periods identified in Part 2, Section 2.10.3. Pedestrian traffic must be accommodated either in its final location or through the implementation or continuation of pedestrian detours which shall include facilities meeting or exceeding the requirements of the Americans with Disabilities Act.

The intent of the Interim Milestone Completion date is to ensure that the travelling public can utilize the new facility by the milestone completion date and that the facility is safe for all modes of transportation for the period between the milestone completion date and the final completion date. The period between the Interim Milestone Completion date and the final completion date is provided to allow the Design-Builder to complete work that is not critical for moving traffic to the newly constructed facility. Work performed between the milestone completion date and the final completion date shall be performed within the allowable lane closure periods identified in Part 2, Section 2.10.3.

The Department will pay the Design-Builder a “no excuses” incentive payment in the amount of Nine Million Dollars (\$9,000,000) if the Interim Milestone Completion Work is completed between May 23, 2016 and June 28, 2016.

The Design-Builder will receive a “no excuses” incentive payment in the amount of Eight Million Dollars (\$8,000,000) if the Interim Milestone ~~One~~-Completion Work is completed on June 29, 2016. For every day after June 29, 2016 the Design-Builder takes to complete the Interim Milestone ~~One~~-Completion Work, the incentive will decrease at a daily rate of Thirty One Thousand Six Hundred Forty ~~three-Three~~ Dollars (\$31,643) until August 5, 2016 when the “no excuses” incentive payment for Milestone ~~One~~-Completion Work will be Six Million Eight Hundred Twenty Nine Thousand Two Hundred Nine Dollars (\$6,829,209).

The Design-Builder will receive a “no excuses” incentive payment for Milestone ~~One~~-Completion Work in the amount of One Million Eight Hundred Fifty Four Thousand Three Hundred Sixty One Dollars (\$1,854,361) if the Interim Milestone ~~One~~-Completion Work is completed on August 6, 2016. For every day after August 6, 2016 the Design-Builder takes to complete the Interim Milestone ~~One~~-Completion Work, the incentive will decrease at a daily rate of Thirty One Thousand Six Hundred Forty Three Dollars (\$31,643) until September 2, 2016 when the “no excuses” incentive payment for Milestone ~~One~~-Completion Work will be One Million Dollars (\$1,000,000). If the Interim Milestone Completion ~~One~~-Work is not completed by September 2, 2016, the Design-Builder will be assessed liquidated damages in accordance with Section 5.5.2 below.

The Interim Milestone ~~One~~ Completion Work incentive payment would be paid in addition to and separate from the Contract price. For the purposes of this provision, completion shall be defined as Final Acceptance of all Interim Milestone ~~One~~ Completion Work as defined above and in accordance with process described in Part 4, Section 6.6.~~23~~. Any remaining work required to reach final completion, and Final Acceptance for the entire US 29 & Rio Road Grade Intersection project in accordance the Contract Document will be required to be performed within the allowable ~~work hour restrictions~~lane closure periods included in Part 2 of the RFP. No lane or shoulder closures will be allowed outside of the allowable ~~work hours~~lane closure periods. The Final Acceptance of all Work for the US 29 & Rio Road Grade Separated Intersection, to be completed in accordance with the Contract Document, shall be no later than ~~November 22, 2016~~ December 2, 2016.

~~5.2.2.3 — Interim Milestone Two — Completion of US 29 & Rio Road Grade Separated Intersection (May 23, 2017 and September 2, 2017)~~

~~If the Design Builder elects to start Work for the US 29 & Rio Road Intersection on May 23, 2017, the Design Builder will be required to meet the same Milestone Completion Work requirements defined in Section 5.2.2.2 above by September 2, 2017. NO incentive payments will be provided for Interim Milestone Two Completion Work. For the purposes of this provision, work completion shall be defined as Final Acceptance of all Milestone Completion Work as defined above in Section 5.2.2.2 and in accordance with the process described in Part 4, Section 6.6.3. Any remaining work required to reach final completion in accordance with the Contract Documents, and Final Acceptance for the entire US 29 & Rio Road Grade Intersection project will be required to be performed within the allowable work hour restrictions included in Part 2 of the RFP. No lane or shoulder closures will be allowed outside of the allowable work hours. The Final Acceptance of all Work completed in accordance with the Contract Documents shall be no later than October 30, 2017. If the Interim Milestone Two Completion Work is not completed by September 2, 2017, the Design Builder will be assessed liquidated damages in accordance with Section 5.5.3 below.~~

5.2.2.4–3 Acknowledgement of Delays

The parties anticipate that delays may be caused by, or arise from, any number of events during the term of the Contract Documents including, but not limited to: work performed, work deleted, work orders, valid Scope Issues identified during the Scope Validation Period, supplemental agreements, force accounts, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extension, extra work, overruns, nearby or adjacent projects, right of way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions of third parties, actions of local residences and business owners, shop drawing approval, process delays, expansion of the physical limits of the Project, weather (other than floods in excess of the base flood, hurricane force winds and tornados), weekends, holidays, suspension of contract time, extended or absorbed home office or job site overhead, lump sum maintenance of traffic adjustments, lost profits, prime mark-up impacts, conditions, circumstances, or potential damages on or pertaining to or as arising out of the Contract Documents, or other events, forces, or factors sometimes experienced in highway and bridge construction work. Further, all costs or impacts incurred by the Design-Builder (not previously identified and covered by work order, overrun, or force account) shall be the sole responsibility of the Design-Builder if the Design-Builder chooses to accept the “no excuses” incentive.

The “no excuses” incentive shall not apply to delays related to Unknown Hazardous Materials, wars, floods in excess of the base flood (as defined in the Division 1 Amendment), hurricane force winds, tornados, ~~labor disputes~~, and earthquakes that cause ground accelerations in excess of AASHTO bridge design standards for the Site.

5.2.2.5–4 Procedure to receive “no excuses” incentives

The Design-Builder shall, in order to receive any “no excuses” incentive payments:

1. Complete all Interim Milestone Completion Work that the Design-Builder is seeking a “no excuses” incentive for as outlined above and in accordance with the Contract Documents.
2. Obtain Department written concurrence of Final Acceptance, in accordance with the process described in Part 4, Section 6.6. ~~23~~.
3. After receiving written concurrence of Final Acceptance by the Department for the Interim Milestone the Design-Builder is seeking a “no excuses” incentive payment for, the Design-Builder shall sign a “Release of ALL Claims” form supplied by the Department. The “Release of ALL Claims” form certifies that all Work has been completed and has attained the Departments Final Acceptance and includes a full and complete release and acknowledgement of satisfaction by the Design-Builder of any and all claims, causes, actions, issues, demands, disputes, and matters of controversy of any nature or kind whatsoever for all Work performed from the Agreement Date until the Department’s Final Acceptance of all Interim Milestone Completion Work the Design-Builder is seeking an incentive for and/or Early Completion of Final Project. This release and acknowledgement of satisfaction shall be all-inclusive and absolute.

5.2.2.6–5 Failure to Receive a “no excuses” incentive

Should the Design-Builder either fail to complete the Interim Milestone Completion Work the Design-Builder is seeking a "no excuses" incentive payment for on or before the associated Interim Milestone Completion Date, or having satisfactorily completed the Work fail to request the "no excuses" incentive payment for any reason, including but not limited to the Design-Builder choosing not to fully release and acknowledge satisfaction of any and all claims etc. as set forth in the "Release of ALL Claims" form, the Design-Builder shall have no rights to any "no excuses" incentive payment(s) whatsoever.

5.3 Adjustments. The Final Completion Date(s) for the entire Project and Interim Milestones, in the Department's sole discretion, shall be subject to adjustment in accordance with the provisions described herein.

The Department in its sole discretion will determine Final Acceptance and the Final Completion Date(s). The Interim Milestone Completion Date(s) will not be adjusted for any reason, cause or circumstances whatsoever, unless determined otherwise by the Department in accordance with the requirement and procedures outlined in Part 4, Article 9. In which case, the Department, in its sole discretion will determine if the Interim Milestone Completion Date(s) will be adjusted for any reason. In the event that the Department approves adjustments to the Final Completion Date for the Entire Project and/or Interim Milestone Completion dates, a work order will be generated to clearly identify the date changes and the application, if any, of any incentive/disincentive (or liquidated damages) with regard to any revised Final Completion Date for the Entire Project and/or Interim Milestone Completion dates.

5.5 Liquidated Damages. Design-Builder understands that if the Final Completion Date or any Interim Milestone Dates are not attained, Department will suffer damages which are difficult to determine and accurately specify. The liquidated damages specified herein shall act as an agreed and reasonable estimate of those damages and not as a penalty. To compensate the Department for such damages, Design-Builder hereby agrees as follows:

5.5.1 Liquidated Damages for Failing to Meet Final Completion Date for Entire Project

Liquidated damages for failing to attain Final Acceptance for all three elements of the Project (US 29 & Rio Road Grade Separated Intersection, US 29 Widening and Berkmar Drive Extension) by the Final Completion date of October 30, 2017 is Twenty Five Thousand Six Hundred Dollars (\$25,600) per day.

5.5.2 Liquidated Damage for Failing to Meet Completion Date(s) for Interim Milestone ~~One~~

Liquidated damages for failing to attain Final Acceptance for all Work items defined in Section 5.2.2.2 for Interim Milestone ~~One~~ Completion by September 2, 2016, is Thirty Seven Thousand Dollars (\$37,000) per day. An additional liquidated damage in the amount of Three Thousand One Hundred Dollars (\$3,100) per day will be applied for not attaining Final Acceptance of all remaining Work for the entire US 29 & Rio Road Grade Intersection by December 2, 2016.

~~5.5.3 Liquidated Damage for Failing to Meet Completion Date for Interim Milestone Two~~

~~Liquidated damages for failing to attain Final Acceptance for all Work items defined in Section~~

Request for Proposals

Part 3 – Addendum No. 1

Lump Sum Agreement

~~October 2, 2014~~ November 5, 2014

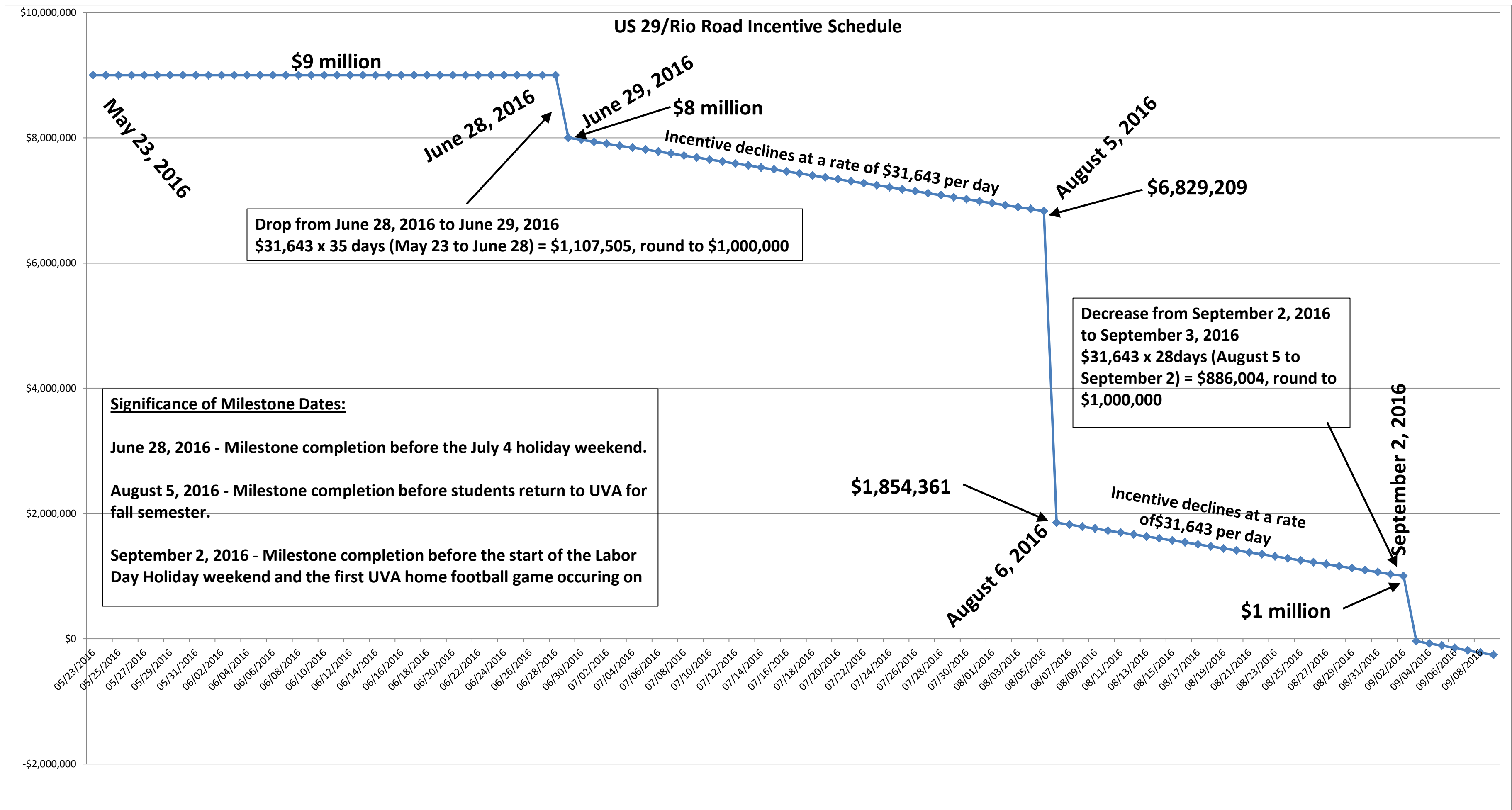
Design-Build Project for Route 29 Solutions

Albemarle County, Virginia

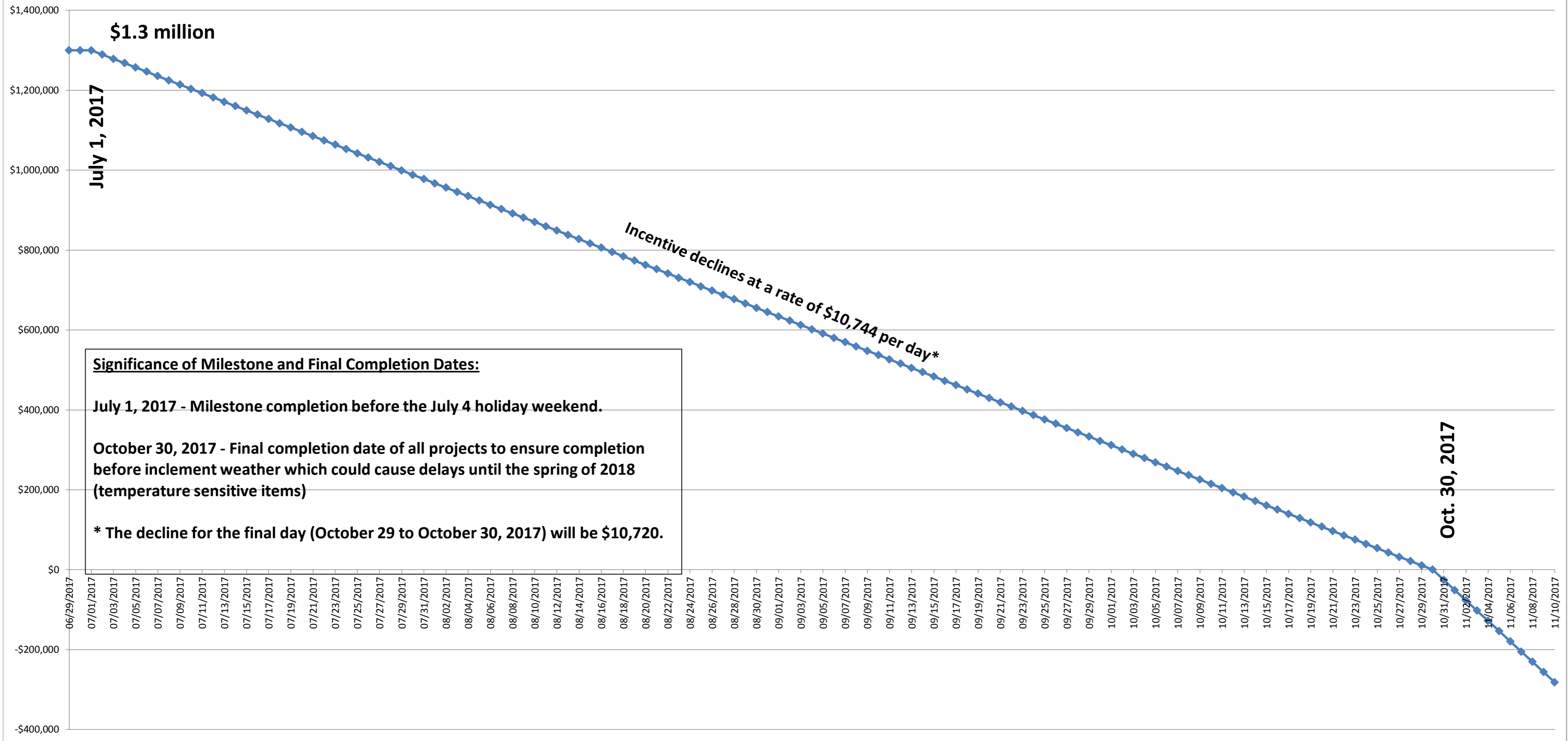
Project Nos. 0029-002-091; 0029-002-135; 9999-002-900

Contract ID # C00077383DB80

~~5.2.2.3 for Milestone Two Completion by September 2, 2017 is Thirty Seven Thousand Dollars (\$37,000) per day.~~



All Projects Incentive Schedule



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