



**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

CONSTRUCTION DIVISION
SUITE 700, JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1402
(615) 741-2414

BUTCH ELEY
DEPUTY GOVERNOR &
COMMISSIONER OF TRANSPORTATION

BILL LEE
GOVERNOR

March 16, 2023

Mr. Daniel Newton
Field Operations Team
FHWA-Tennessee Division
404 BNA Drive, Building 200, Suite 508
Nashville, TN 37217

RE: Special Experimental Project 14 No Excuse Bonus/Disincentive Request

Dear Mr. Newton:

Please accept this correspondence for the Special Experimental Project 14 – No Excuse Bonus/Disincentive request for use on TDOT project R-STP/NH-115(29); 47026-3280-14 in Knox County. TDOT is requesting permission through the Tennessee Division Office to use the No Excuse Bonus/Disincentive in contract Special Provision 108B (draft attached).

The No Excuse Bonus and Disincentive amounts have not been calculated conventionally. Using a Road User Cost analysis, the cost associated strictly with road user delay in the area of the NEB work is \$17,018.15/day, or \$476,508.14 over the 28-calendar day period. Access by emergency vehicles to the hospital will be altered during this phase of work, and delays could literally mean the difference in life or death. It is difficult to assign a dollar value on an individual's life. The most recent Value of a Statistical Life (VSL) listed in the U.S. Department of Transportation's Departmental Guidance on Valuation of a Statistical Life in Economic Analysis for base year 2021 is \$11.8 million. Due to the urgent requirement to complete the work as quickly as possible, TDOT feels that doubling the Road User Cost is warranted and hopes that FHWA would agree with this logic.

This project is currently scheduled to be advertised on April 14, 2023, for the May 12, 2023, letting. We look forward to hearing from you on our request.

If you have any questions, please contact Brian Egan (615-741-1158) or me at 615-566-9715.

Sincerely,

Jamie Fitzpatrick, P.E.
Assistant Director of Construction

Reference: [Departmental Guidance on Valuation of a Statistical Life in Economic Analysis | US Department of Transportation](#)

SEP-14 Work Plan

Tennessee Department of Transportation (TDOT)

No Excuse Bonus/Disincentive

Project: R-STP/NH-115(29); 47026-3280-14

Project Description: The Widening of SR-115 (US-129) from Woodson Drive to Cherokee Trail Interchange (IA)

March 16, 2023

Introduction

The Tennessee Department of Transportation (TDOT) proposes to use a No Excuse Bonus/Disincentive for the specific work on the subject project that will impact ingress and egress to the University of Tennessee (UT) Medical Center. The work involving the No Excuse Bonus/Disincentive consists of the construction of Retaining Wall 6 along Cherokee Trail from project stations 118+00 to 122+00. This work requires closing the existing entrance to UT Medical Center and detouring traffic to access the new entrance to UT Hospital. The detour requires westbound traffic on Cherokee trail to cross SR-115 utilizing the existing ramp, then make a right hand turn onto the new ramp, make a right turn back onto Cherokee Trail and cross SR-115 a second time, and then turn left into the new entrance to UT Medical Center. UT Medical Center is the only Level I Trauma Center in the area. Completing this work as efficiently as possible is of utmost importance to ensure that traffic to the hospital is not unnecessarily impeded. The Work included in the NEB is between approximate stations 118+00 to 122+00 on Cherokee Trail in Traffic Control phase 3B that requires closing existing UT Medical Center entrance and detouring traffic around the Work included in the NEB in Phase 3B. This Work shall include the completion of Retaining Wall 6 and the completion of the specific section of Cherokee Trail to grade, paved through the asphalt binder course, and open to traffic per Traffic Control Plan Phase 3C traffic pattern. Work occurring outside of the roadway or work that can be completed utilizing nighttime lane closures will not count against the NEB. Lane rental is not a tool that is being utilized on this contract and Liquidated Damages for closures outside of the times listed in the SP108B are not to be interpreted as Lane Rental rates.

Purpose

The purpose of the No Excuse Bonus/Disincentive is to ensure that the work requiring the closure of UT Medical Center Entrance is done as quickly and efficiently as possible so that traffic to the hospital isn't unnecessarily impeded.

Scope

The work to be done for the No Excuse Bonus requires the temporary closure of UT Medical Center Entrance. The work is on Cherokee Trail from Station 118+00 to 122+00 and involves the completion of Retaining Wall 6 using light weight geofoam backfill and opening traffic on Cherokee Trail and new UT Hospital Entrance to Phase 3C Traffic configuration on the binder layer of asphalt.

Schedule

The contract is tentatively scheduled to be advertised on April 14, 2023, for the May 12 letting. The anticipated start date for construction is June 23, 2023, and the tentative completion date for the whole project is set for June 31, 2028. The contractor will be given a 28-calendar day working window in which to complete the work shown in Traffic Control Phase 3B requiring the closure of UT Medical Center Entrance at Cherokee Trail. The 28-calendar day window will begin the day that existing UT Medical Center Entrance is closed to traffic and will end when access to new UT Hospital Entrance is open to traffic as shown in the Traffic Control Plans 3C with the traffic configuration for westbound

Cherokee Trail to UT Hospital Entrance shown in Traffic Control Phase 3B no longer required. A Disincentive will be assessed for each day beyond 28 calendar days in which the new Entrance is not open to traffic.

Evaluation

The contract Special Provision 108B will specify the work that will be required to be completed by the No Excuse Bonus/Disincentive Deadline for the Contractor to qualify for the No Excuse Bonus. TDOT will make the determination as to whether all work necessary for Acceptance has been satisfactorily completed.

The following items will be evaluated:

1. Was the No Excuse Bonus/Disincentive effective in motivating the Contractor to complete the Work in the 28-calendar day working window?
2. Did the No Excuse Bonus/Disincentive allow TDOT to achieve its project commitments to UT Medical Center to complete the work in 28 calendar days?
3. What was the reaction of the Contractor to the No Excuse Bonus/Disincentive?
4. What was the reaction of Industry to the No Excuse Bonus/Disincentive?
5. Did any administrative or legal issues arise from the use of the No Excuse Bonus/Disincentive

Reporting

A final report will be submitted to FHWA after completion of the project. The report will include an evaluation of the No Excuse Bonus/Disincentive, the Contractor and Industry reactions, any issues that were encountered, and a recommendation as to whether to use No Excuse Bonus/Disincentive for similar construction on future contracts.

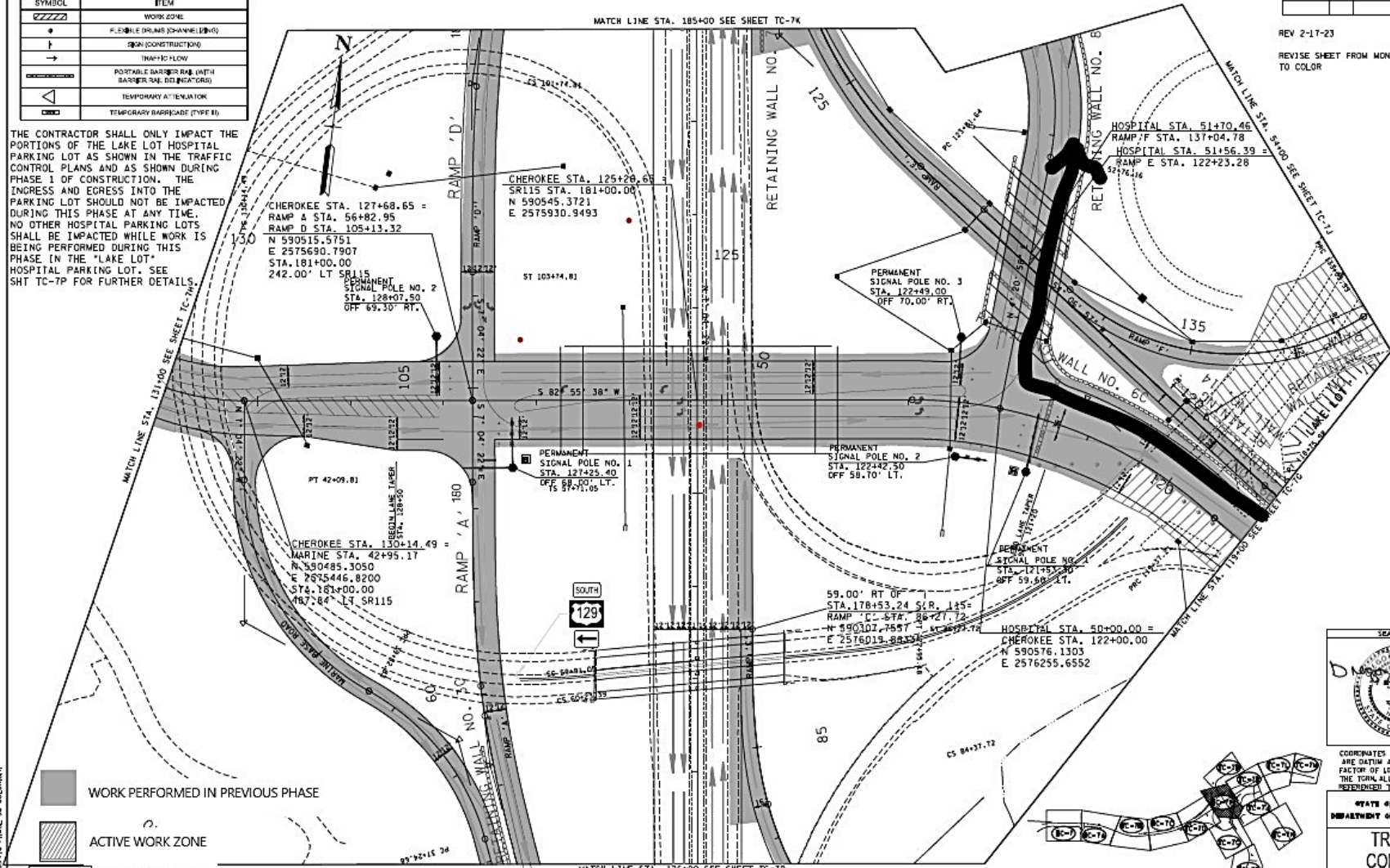
This sheet depicts the traffic pattern in the interchange in Phase 3C. The work in the hatched area in Phase 3B has been completed and traffic on Cherokee Trail now has access to the new UT Hospital Entrance without having to cross over SR-115, Alcoa Highway.

TRAFFIC CONTROL LEGEND	
SYMBOL	ITEM
	WORK ZONE
	FLASHING DRUMS (CHANNEL 148.0)
	CONSTRUCTION
	TRAFFIC FLOW
	PORTABLE BARRIER RAIL (WITH BARRIER RAIL INDICATORS)
	TEMPORARY ATTENTION
	TEMPORARY BARRICADE (TYPE B)

THE CONTRACTOR SHALL ONLY IMPACT THE PORTIONS OF THE LAKE LOT HOSPITAL PARKING LOT AS SHOWN IN THE TRAFFIC CONTROL PLANS AND AS SHOWN DURING PHASE 1 OF CONSTRUCTION. THE INGRESS AND EGRESS INTO THE PARKING LOT SHOULD NOT BE IMPACTED DURING THIS PHASE AT ANY TIME. NO OTHER HOSPITAL PARKING LOTS SHALL BE IMPACTED WHILE WORK IS BEING PERFORMED DURING THIS PHASE IN THE "LAKE LOT" HOSPITAL PARKING LOT. SEE SHT TC-7P FOR FURTHER DETAILS.

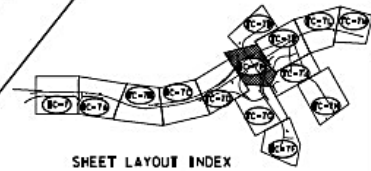
TYPE	YEAR	PROJECT NO.	SHEET NO.
CONST.	2023	R-STP/PH-115239	TC-7E

REV 2-17-23
REVISE SHEET FROM MONOCHROME TO COLOR



2/15/2023 4:04:17 PM INTERDISCIPLINARY PHASE 3C COLOR.MXD

WORK PERFORMED IN PREVIOUS PHASE
 ACTIVE WORK ZONE
 TRAFFIC PATTERN



COORDINATES ARE NAD83/SPHR, ARE DATUM ADJUSTED BY THE FACTOR OF 1.0001 AND TIED TO THE TORN ALL ELEVATIONS ARE REFERENCED TO THE NAVD83.

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

TRAFFIC CONTROL PLANS

STA. 176+00 TO STA. 185+00
SCALE: 1" = 50'

STATE

OF

TENNESSEE

March 16, 2023

County: Knox

Contract No. CNX074

SPECIAL PROVISION

REGARDING

PROJECT COMPLETION AND LIQUIDATED DAMAGES

This project shall be completed in its entirety on or before the completion date shown on the cover of this proposal contract.

The Department plans to expedite the award of the contract. The requirement of Standard Specification Section 108.03.C.2 for acceptance of an Initial Project Schedule prior to beginning Work will be waived for Work to begin on the project. The Contractor shall meet all other requirements of Section 108.03.C for submission of the Initial Project Schedule and Baseline CPM Schedule within the calendar days specified. Schedule updates shall be submitted monthly, thereafter, as specified in 108.03.C.

To expedite construction of Work between approximate stations 118+00 to 122+00 on Cherokee Trail in Traffic Control phase 3B that requires crossing existing UT Medical Center Entrance and reduce the time of construction required to complete the work in this location, the Department establishes the following NO EXCUSE BONUS and DISINCENTIVE provisions:

NO EXCUSE BONUS / DISINCENTIVE

The Work between approximate stations 118+00 to 122+00 on Cherokee Trail in Traffic Control Phase 3B that requires closing existing UT Medical Center Entrance shall be completed on or before 28 calendar days beginning on the day when the entrance is closed to traffic. This Work shall include the completion of Retaining Wall 6 and the completion of the specific section of Cherokee Trail to grade, paved through the asphalt binder course, and open to traffic per Traffic Control Plan Phase 3C traffic pattern. The Contractor shall schedule this segment of the Work such that the work occurring between approximate stations 118+00 to 122+00 on Cherokee Trail in Traffic Control phase 3B is not performed when seasonal restrictions on asphalt paving could or will limit the Contractor from paving. For completion of this portion of the Work in 28 calendar days or less, the Department will award the contractor a NO EXCUSE BONUS of \$1,000,000. If the specific section of Cherokee Trail is not to grade, paved through the asphalt binder course, and open to traffic per Traffic Control Plan Phase 3C traffic pattern after 28 calendar days have elapsed, the contractor will no longer be eligible to receive the NO EXCUSE BONUS, and the

sum of \$30,000 per day shall be deducted from the contractor, not as penalty but as liquidated damages for each day after 28 calendar days have elapsed until the work specified in the No Excuse Bonus is complete.

The NO EXCUSE BONUS will be paid only if the work is completed as noted above and as determined by the Department noted above and is subject to the conditional precedent set forth below. For purposes of the determination of entitlement to the incentives stated above, the NO EXCUSE BONUS Completion Timeframe will not be adjusted for any reason, cause, or circumstance whatsoever, regardless of fault, save and except in the instance of a catastrophic event (e.g., tornado, earthquake or declared state of emergency) directly and substantially affecting the project as determined by the Department.

The parties to this contract 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/revisions or defects, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, shop drawing approval process delays, weather, weekends, special events, 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 impact on performance by the Contractor are specifically contemplated and acknowledged by the parties when entering this Contract and shall not extend the NO EXCUSE BONUS Completion Timeframe 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 event impacts in an effort to complete the Contract by the NO EXCUSE BONUS Completion Timeframe, regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance.

If a catastrophic event occurs (e.g., tornado, earthquake, or a declared state of emergency), directly and substantially affecting the Contractor's operations on the Contract as determined by the Department, then the Contractor and the Department shall reach agreement within 14 days as to the number of calendar days to extend the NO EXCUSE BONUS Completion Timeframe. In the event the Contractor and the Department are unable to reach agreement within 14 days after a catastrophic event on the number of calendar days to extend the NO EXCUSE BONUS Completion Timeframe, the Department shall unilaterally determine the number of calendar days to extend the NO EXCUSE BONUS Completion Timeframe reasonably necessary and due solely to the catastrophic event and the Contractor shall have no right whatsoever to contest such determination, save and except that the Contractor establishes, to the satisfaction of the Department, that the number of calendar days determined by the Department was arbitrary or without any reasonable basis.

Any NO EXCUSE BONUS earned by the Contractor shall be waived if the Contractor or any of the Contractor's Subcontractors or Suppliers experiences a fatality arising from the performance of work for the NO EXCUSE BONUS.

The Contractor shall have no rights under the Contract to make any claim arising out of this NO EXCUSE BONUS provision except as is expressly set forth herein.

As conditions precedent to the Contractor's entitlement to any NO EXCUSE BONUS the Contractor must:

- (1) Complete the Work between approximate stations 118+00 to 122+00 on Cherokee Trail in Traffic Control phase 3B that requires closing UT Medical Center Entrance, open Cherokee Trail to traffic in Phase 3C traffic configuration and obtain written verification of completion and acceptance from the Engineer before the NO EXCUSE BONUS Completion Timeframe ends.
- (2) Notify the Department in writing within 30 days of receiving written verification of completion of the NO EXCUSE BONUS specified Work from the Engineer per (1) above that the Contractor elects to be paid the NO EXCUSE BONUS, which shall be calculated based on the actual Completion Timeframe verified by the Engineer per (1) above.

The Contractor's written notice per (2) above shall constitute full and complete waiver, release and acknowledgement 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/revisions or defects, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, shop drawing approval process delays, weather, weekends, special events, 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 arising out of the Contract. This waiver, release and acknowledgement of satisfaction shall be all-inclusive and absolute, save and except any routine Department final estimating quantity adjustments and any supplemental agreements or construction change orders that may be pending on the NO EXCUSE BONUS Completion Timeframe, which will then be resolved within 30 days and prior to the payment to the Contractor of the NO EXCUSE BONUS as set forth above in items (1) and (2).

Should the Contractor fail to actually complete the NO EXCUSE BONUS specified Work and obtain written verification of completion of the NO EXCUSE BONUS specified Work from the Engineer before the NO EXCUSE BONUS Completion Timeframe, or should the Contractor, having done so, fail to timely request the NO EXCUSE BONUS for any reason, and including but not limited to the Contractor choosing not to fully waive, release and acknowledge satisfaction as set forth in item (2) above, the Contractor shall have no right to any payment whatsoever under this provision.

In the event the Contractor elects to request the NO EXCUSE BONUS payment as described in this special provision, and if this provision should conflict with any other provision in the Contract, then the terms of this special provision shall control.

As to any Contract work provided for herein, the Contractor will remain responsible for all such work and the continued maintenance thereof until such date as the Department accepts all work under the Contract in accordance with the Standard Specifications, as amended, and without regard to whether the Department has provided written verification of completion or not, and without regard to whether any NO EXCUSE BONUS was earned or elected hereunder.

Payment or deductions will be made under the following items on progress estimates:

<u>Item No.</u>	<u>Pay Item</u>	<u>Pay Unit</u>
108-01.	No Excuse Bonus	Lump Sum
108-10.13	Disincentive Deduction	Calendar Day

PROJECT RESTRICTIONS

All lane closures and operations must be coordinated with existing construction contracts in the area.

All lane closures must be approved in advance by the Engineer. A minimum of seven days' notice must be provided in advance of any closure. Any work requiring lane closures including pavement marking operations shall be at night between the hours of 7PM and 6AM (Sunday through Thursday) and 10PM and 8AM (Friday and Saturday) unless otherwise directed by the TDOT Operations District Engineer and the Regional Traffic Incident Management Coordinator. For each hour, or portion thereof, in which a lane is closed to traffic outside of these restrictions, the contractor will be charged \$2,500 per hour per lane, not as penalty, but as liquidated damage. No lane closures will be allowed on Saturdays when the University of Tennessee plays football in Knoxville, during Special Events, Holidays or Holiday weekends in accordance with the plans and specifications, or as approved by the TDOT Operations District Engineer and the Regional Traffic Incident Management Coordinator.

Rolling roadblocks for clearing, grading, blasting operations, etc. will be allowed during non-peak hours from 9:00 AM to 3:00 PM and from 7:00 PM to 6:00 AM unless otherwise directed by the TDOT Operations District Engineer and the Regional Traffic Incident Management Coordinator. Blasting shall only occur during daylight hours as stated in *Rules of Department of Commerce and Insurance Division of Fire Prevention, Chapter 07080-02-15, Blasting Standards*. Duration of each rolling roadblock shall not exceed twenty (20) minutes. Traffic shall be allowed to return to free flow conditions before beginning another rolling roadblock. For

every minute, or portion thereof, in which a lane is closed to traffic outside of these restrictions, the contractor will be charged \$500 per minute per lane, not as penalty, but as liquidated damage

Traffic will be temporarily allowed to drive on a milled surface under the conditions detailed in

the Special Notes of the plans. For each day, or portion thereof, in which the milled surface has not been paved within 72 hours for ADT greater than or equal to 70,000 or within 96 hours for ADT less than 70,000, the contractor will be charged \$1,000 per day per lane, not a penalty, but as liquidated damage.

The traffic control plans shall be adhered to in each stage of the work. Available work that does not interfere/impede with traffic flow as shown in the traffic control plans may be completed in any stage.

The Contractor shall plan the operations of the Work such that access to UT Medical Center by emergency equipment is maintained at all times, ~~except for the 28-calendar day period of time for the Work at approximate stations 118+00 to 122+00 on Cherokee Trail in Traffic Control phase 3B that requires closing UT Medical Center Entrance.~~ ***Note: April 10, 2023 - As a result of discussions between TDOT and FHWA, TDOT removed the struck-out language from the sentence above.***

Liquidated Damages and Disincentive per Calendar Day will not be considered in determining estimated net savings for Value Engineering Change Proposals.

All Project Commitments as listed in the plans must be adhered to throughout the project duration.

No partial payments, including payment for stockpile materials, shall be made before work begins.