



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **ACTION:** Minnesota No-Excuse Incentive
(Locked Incentive Date) Contract Provision under
Special Experimental Project No. 14 (SEP-14)

Date: April 6, 2021

From: */Digitally signed by **Brian J. Fouch** DATE 2021.04.06 14:35:45 –
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Brian J. Fouch
Director, Office of Preconstruction,
Construction, and Pavements

In Reply Refer To:
HICP-20

To: Wendall L. Meyer
Division Administrator
St. Paul, MN.

This memorandum is in regard to a March 23 email sent by Abbi Ginsberg of your office, which transmitted and endorsed the following:

1. A Minnesota Department of Transportation (MnDOT) Special Experimental Project No.14 (SEP-14) workplan, dated March 2021, for the use of a No Excuse Incentive (Locked Incentive Date, or LID) Contract Provision for a concrete pavement preservation project within and near the I-94/I-35E Interchange (MnDOT Project No. 6283-247) in downtown St. Paul, MN; and
2. A MnDOT transmittal letter, dated March 18 and signed by Paul Johns (for Tom Ravn, State Construction Engineer) transmitting the above workplan and requesting FHWA approval.

We appreciate the efforts of William Lohr and Abbi Ginsberg in working with MnDOT to resolve the questions we had regarding the 2015 LID evaluation report. With the resolution of these concerns, our office may now consider this LID request.

The annual average daily traffic at the I-94/I-35E Interchange is between 144,000 and 159,000 on I-94 and between 71,000 and 150,000 on I-35E. Project completion (without the LID) is projected to take three construction seasons. MnDOT is proposing the use of the LID to expedite completion of the pavement preservation project within two construction seasons, thus reducing the duration of traffic impacts, the cost of extensive traffic control, the impacts to business and shipping, and delays to commuters.

MnDOT shall pay the Contractor a lump sum incentive of \$500,000.00 if the work specified in the contract is completed on or before September 24, 2022. The LID incentive amount is based on approximately 2% of the anticipated contract bid price. This amount was agreed to by all project partners as a reasonable incentive and an attractive incentive for the contractor.

Under the LID Special Provision, the LID shall not be adjusted for any reason, cause or circumstance whatsoever, regardless of the cause of the delay, and even though it may have been caused by MnDOT, Contractor acknowledges and agrees that delays may be caused by or arise from any number of events during the course of the Contract. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering this Contract and shall not result in an extension of the LID set forth above. Any and all costs or impacts incurred by the Contractor in accelerating the Contractor's work to overcome or absorb such delays in an effort to complete the work by the LID, regardless of whether the Contractor successfully meets the LID or not, shall be the sole responsibility of the Contractor in every instance.

Though the LID Special Provision does not address catastrophic (force majeure) events, MnDOT believes that these events are addressed elsewhere in the MnDOT Specifications.

Other details are included in the SEP-14 workplan.

MnDOT's use of a No Excuse Incentive (Locked Incentive Date, or LID) Contract Provision for a concrete pavement preservation project within and near the I-94/I-35E Interchange (MnDOT Project No. 6283-247) is hereby approved.

Should you have any questions, please contact Mr. Brian Hogge at (334) 399-0081 or Mr. John Huyer at (720) 437-0515.