DATE: December 3, 2013

TO: Region Engineers
    Region Associate Construction Engineers
    Region Construction Engineers
    TSC Managers
    TSC Construction Engineers

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SUBJECT: Bureau of Highway Instructional Memorandum 2013-15
          Progress Clauses, Liquidated Damages, Incentives, Quality Initiatives and
          Adjustments, and FieldManager Documentation
          Supersedes BOHIM 2009-01

This memorandum provides guidance on progress clauses, specifications and application of
liquidated damages, incorporation of pay items for incentive provisions and quality adjustments,
and the use of FieldManager Documentation.

A recent informal audit has noted discrepancies in the reporting of incentive payments and the
application of liquidated damages. These discrepancies require procedural modifications. The
procedures below are to be followed to ensure accurate reporting of incentive payments and
liquidated damage amounts. Guidance is provided regarding the location of specification
language for each of these items.

Progress Clause
The progress clause is intended to specify the construction timing and schedule requirements to
the contractor. The progress clause is provided by the Construction Engineer at the Omissions
and Errors Check (OEC) meeting. This document provides the project start and completion
dates as well as any interim dates (e.g. open to traffic, staging, milestone) The contractor is
required to prepare a progress schedule for submittal at the preconstruction meeting that
incorporates the project dates as noted in the progress clause. Traffic requirements and
liquidated damages are not to be described in detail in the progress clause. However, the
progress clause must mention that failure to meet the specified date(s) will result in the
assessment of liquidated damages as specified in other contract documents.
If the project involves an expedited schedule, the progress clause is to include the language referenced in Section 102.3.5 of the Construction Manual (2003 revision, page 102-19).

**Liquidated Damages**
Liquidated damages for department oversight costs are specified in subsection 108.10.C.1 of the *2012 Standard Specifications for Construction*. These damages represent the additional cost of engineering and supervision due to a contractor’s failure to open to traffic or complete work within the specified contract time. These liquidated damages will be identified as the pay item “Liquidated Damages, Oversight”.

Liquidated damages for other department costs are described in subsection 108.10.C.2 of the *2012 Standard Specifications for Construction* and these represent the inconvenience to the public, maintenance of detours, and other items that have caused an expenditure of public funds due to the contractor’s failure to open to traffic or complete the work within the specified contract time. These liquidated damages, when applicable, may be combined with liquidated damages described in subsection 108.10.C.1. Liquidated damages for other department costs will be identified as the pay item “Liquidated Damages, Other”.

Liquidated damages for user delay costs are to be assessed with the pay item “Liquidated Damages, Other” as these liquidated damage values are not associated with subsection 108.10.C.1. These liquidated damages are not to be described in the progress clause, incentive special provisions, the special provision for maintaining traffic, or any other contract documents. A unique special provision must be developed when applying liquidated damages for other department costs. The special provision is to be titled Special Provision for Liquidated Damages for Other Department Costs. These damages may be specified by the hour, day, or some other increment of time, and must be supported by a user delay analysis. The monetary amount of damage per unit of time must not exceed the user delay monetary amount per unit of time.

The calculation of liquidated damage values (e.g. user delays costs) for other department costs must be documented and placed in the appropriate project folder in the ProjectWise directory.

**Incentives**
Incentive special provisions provide monetary amounts for completion of work before specified contract dates. These special provisions, if applicable, are to be referenced in the progress clause for successfully meeting dates or times, but the specific incentive requirements and monetary amounts are to be included in a unique special provision. The special provision is to be titled Special Provision for Incentive, (Route (Structure Number)), (Incentive Type). The structure number is only to be included on bridge projects and if the bridge has an associated incentive. Incentive types are: Completion of Work; Interim Completion of Work; and Approved for Traffic. Incentive projects are to include the Special Provision for Extension of Time and Extra Cost for Incentive/Disincentive Projects (12SP108(A)). BOHIM 2002-14 provides guidelines that must be followed during project development, when proposing changes to incentive/liquidated damage contract provisions and when making final incentive/liquidated damage determinations.
MDOT is phasing out the disincentive terminology. This language simply references failure to meet the contract incentive requirements. The disincentive language is not to be used on construction oversight documentation. Not meeting the incentive requirements will result in the application of liquidated damages and the associated pay item “Liquidated Damages, Other”.

The calculation of incentive values based on user delay costs must be documented and placed in the appropriate project folder in the ProjectWise directory.

**Quality Initiatives and Adjustments**

Initiative pay items are used to establish a budgeted project amount for material work that exceeds specification thresholds and requirements. These values are calculated for each project and further instructions for determining these values can be obtained from the Specifications and Estimates Section in the Design Division. The contractor does not bid on these pay items. The pay items are established in the bid documents with a unit cost of one dollar with the total maximum amount fixed per the calculated value by the project design staff.

Adjustment pay items are used for assessing negative monetary amounts to the contractor when materials or work requirements are not met. Requirements for issuing pay item adjustments can be found in the applicable special provision or the Standard Specifications for Construction.

Initiative and adjustment calculations for material and workmanship specification issues (e.g., material testing, percent within limits, joint density, etc.) must be calculated and evaluated upon completion of the work or a sub unit (i.e., lot, sublot, etc.) of the work as noted in the respective special provision or the Standard Specifications for Construction. This review will ensure that construction staff appropriately evaluates potential negative assessments, rejection of material, or removal of material in a timely manner. The review will promote efficient and timely direction to the contractor.

MDOT has reporting requirements to and receives requests from the State Transportation Commission, Federal Highway Administration (FHWA), Michigan Legislature, Office of Commission Audits, and other entities regarding use of incentives, initiatives, and adjustments. All bi-weekly or final applications of adjustments or initiatives must be processed individually. These are not to be grouped together as a net resultant. MDOT must report the data in its individual units and applications.

The following are brief descriptions of quality adjustments commonly used on construction projects.

**Soil Erosion and Sedimentation Control Adjustment**

The applicability of this pay item is discussed in the Special Provision for Non-Compliance with Soil Erosion and Sedimentation Control Requirements (12SP208(A)).

**Open Graded Drainage Course Adjustment**

The applicability of this pay item is discussed in the Special Provision for Open-Graded Drainage Course (12SP303(A)).
HMA Quality Adjustment
Used when HMA work results in a negative assessment against the contractor for failure to meet specification requirements.

Longitudinal Joint Density Quality Adjustment
Used when HMA joint work results in a negative assessment against the contractor for failure to meet specification requirements.

Conc Quality Adjustment
Used when concrete work results in a negative assessment against the contractor for failure to meet specification requirements.

Traf Control Quality and Compliance Adjustment
The applicability of this pay item is discussed in the Special Provision for Traffic Control Quality and Compliance (12SP812(C)).

The following pay item codes and descriptions must be used on MDOT let projects. Several of these items will be specified prior to letting when establishing pay items for bidding, but many will be used as an extra pay item established during the life of the project when needed. These pay items are included in the most recent reference file in FieldManager.

<table>
<thead>
<tr>
<th>Pay Item Code</th>
<th>Unit of Measure</th>
<th>Pay Item Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1020001</td>
<td>LS</td>
<td>Lane Rental</td>
</tr>
<tr>
<td>1020002</td>
<td>Dlr(+)</td>
<td>Lane Rental Incentive</td>
</tr>
<tr>
<td>1020003(*)</td>
<td>Dlr</td>
<td>Incentive, _________</td>
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<td>1080000</td>
<td>Dlr</td>
<td>Liquidated Damages, Oversight</td>
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<tr>
<td>1080001</td>
<td>Dlr</td>
<td>Liquidated Damages, Other</td>
</tr>
<tr>
<td>2080000</td>
<td>Dlr</td>
<td>Soil Erosion and Sedimentation Control Adjustment</td>
</tr>
<tr>
<td>3030000</td>
<td>Dlr</td>
<td>Open Graded Drainage Course Adjustment</td>
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<tr>
<td>8120000</td>
<td>Dlr</td>
<td>Traf Control Quality and Compliance Adjustment</td>
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</table>

(+) Dlr means Dollars, the unit of measure that is to be used for the respective items. 
(*): The supplemental pay item description can be as appropriate for the project, but it must use the pay item coding noted above, two examples are: Incentive, M-44, Approved for Traffic or Incentive, M-77 (B04 of 88056), Approved for Traffic.

FieldManager Documentation
Construction staff must allocate all negative adjustment pay items appropriately and accurately to the proper project and category numbers on the contract. Project staff are to review the project numbers and categories within the contract for applicability of quality adjustments. These
quality adjustments are not to be applied to categories funded 100 percent by utility, railroad or private companies.

Liquidated damages are to be applied to the project number and category where work was delayed. It is acceptable to split liquidated damages into different projects or categories as applicable. Liquidated damages are not to be applied to categories funded 100 percent by utility, railroad, or private companies.

The processing of negative adjustment pay items must not create an overall negative value category within a project number. Construction staff must verify and ensure positive overall category value in FieldManager prior to processing any contract modification. If a negative overall category value will be created the negative adjustment must be prorated to other appropriate categories and/or project numbers.

MDOT-Let Local Agency Projects
Local Agency projects follow the same administration requirements as noted above with the provision that the Local Agency Project Engineer (LPE) is to review the project numbers and categories within the contract for applicability of quality adjustments and liquidated damages. These quality adjustments and liquidated damages are not to be applied to categories funded 100 percent by utility, railroad or private companies.

If you have any questions, please contact Jason Gutting, Engineer of Construction Operations, at guttingj@michigan.gov or 517-636-6334.