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**PORTSMOUTH-KITTERY  
16189B**

February 2, 2021

**SPECIAL PROVISION****AMENDMENT TO SECTION 108 – PROSECUTION AND PROGRESS**

*The purpose of this Special Provision is to amend  
the requirements for liquidated damages.*

**Replace** Section 108.09 as follows:

**108.09 Failure to Complete on Time.**

For each Calendar Day or Working Day that work remains uncompleted after the Contract Time, the sum specified below will be deducted from any money due the Contractor. This sum shall not be considered and treated as a penalty but as liquidated damages to defray the cost to the Department to administer the Contract including but not limited to the cost of engineering, inspection, supervision, inconvenience to the public, obstruction of traffic, and interference with business due to the Contractor's failure to complete the Work on time. Any adjustment of the Contract Time for completion of the Work granted under the provisions of [108.07](#) will be considered in the assessment of liquidated damages.

In the case of a date in the Contract being given for the completion of parts, phases, or stages, the liquidated damages will be deducted for the period during which that particular work remains incomplete.

Permission for the Contractor or Surety to continue and finish work after the Contract Time and approved time extensions have elapsed shall not waive the Department's rights under the Contract.

The assessment of all or any of the liquidated damages that accrue may be terminated if the Department has determined that the Work is substantially complete and is in a condition for safe and convenient use by the traveling public.

The Work will be considered substantially complete when all necessary signing, striping, guardrail, and other safety appurtenances have been installed, and when applicable opened to the traveling public. For projects that will not be opened to the traveling public, the Contract will be considered substantially complete when it is ready for the subsequent project. This shall not be construed as a Contractual right and its application will be contingent upon the Contractor's constant effort in completing the remaining items of work.

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Liquidated damages shall be assessed in accordance with the following schedule:

<b>Original Contract Amount (\$)</b>		<b>Daily Charge(\$)</b>	
From more than	To and including	Calendar Day	Working Day
0	750,000	590	850
750,000	2,000,000	890	1280
2,000,000	5,000,000	1190	1700
5,000,000	10,000,000	1780	2550
10,000,000	20,000,000	2380	3400
20,000,000	20,000,000+	2970	4250

Should the Contractor elect to work on Saturdays, Sundays, Holidays, or days in December, January, February, and March, after the Completion Date, the Contractor will be charged liquidated damages for such days worked.

When the Contract Time is on a calendar date basis, the Calendar Day schedule shall be used. When the Contract Time is on a working day basis, the Working Day schedule shall be used.

When Acceptance has been made by the Engineer as prescribed in [105.17](#), the daily charge will no longer be assessed.

Should the amount of money otherwise due the Contractor be less than the amount of such liquidated damages, the Contractor and the Surety shall be liable to the State for such deficiency.

The Engineer has the right to deduct the amount of anticipated liquidated damages against the Contractor from any estimated payment for Work performed under the Contract; or to claim and recover such sums by process of law. Review of anticipated Contract completion and potential liquidated damages will commence when 80% of the original Contract Time has elapsed.