

obligations provided by this Contract.

The Contractor agrees that the warranty obligations provided by this Contract shall be reported as an outstanding obligation in the event of bankruptcy, dissolution, or the sale, merger, or cessation of operations of the Contractor.

## SECTION 107 - TIME

Scope of Section This Section contains general time-related provisions of the Contract including the Contract Time, allowable Work times, schedule requirements, Liquidated Damages, and Project Closeout.

107.1 Contract Time and Contract Completion Date All Work must be Complete by the Contract Completion Date and within the Contract Time. Unless expressly provided otherwise by the Department in writing, the Contract Time shall be all time between the Contract Execution and the Completion date specified in the Contract, and any authorized extensions.

107.2 Commencement of Contract Time and Work Unless provided elsewhere in this Contract or in writing from the Department, the Contract Time will commence on the date of Contract Execution. For related provisions, see Sections 101.2 - Definitions of Contract Execution and 103.8 - Execution of Contract by the Department.

Unless specified otherwise, Work may commence upon Contract Execution, unless the Contractor has not secured and provided the Performance and Payment Bonds and Insurance Certificates required by Sections 103.5 - Award Conditions, 110.2 - Bonding, and 110.3 - Insurance. Any Work performed before the requirements of these sections are met is Unauthorized Work and is at the sole risk of the Contractor. Pursuant to Section 110.1 - Indemnification, the Contractor and Surety shall indemnify and hold harmless the Department from any claims arising from Work.

### 107.3 Allowable Work Times

107.3.1 General Work can be performed at any time except Sundays and Holidays, unless expressly specified otherwise in this Contract, including any applicable Permit conditions.

107.3.2 Night Work If the Contractor performs Work during periods of darkness, the Contractor shall comply with Contract requirements governing night Work. If the Contractor elects to perform Work during periods of darkness on its own initiative and without direction from the Department, then the Contractor shall also comply with all municipal ordinances affecting such Work including noise ordinances. When pricing and scheduling the Work, the Contractor shall not assume that such non-directed night Work will be allowed. Accordingly, the Contractor shall not be entitled to any adjustment to either compensation or time due to its inability to secure any required municipal approvals.

107.3.3 Sundays and Holidays The Contractor shall not carry on construction operations on Sundays or Holidays unless (A) expressly specified otherwise in this Contract, (B) authorized by the Department, or (C) necessary to avoid or eliminate a clear and immediate risk of significant bodily injury to any person.

107.3.4 Seasonal Work Restrictions The Contractor shall meet all seasonal restrictions on time of Work contained in the Contract including all Permits.

#### 107.4 Scheduling of Work

107.4.1 General Duty of Contractor The Contractor is solely responsible for the planning and execution of Work in order to complete the Work within the Contract Time.

107.4.2 Schedule of Work Required Within 21 Days of Contract Execution and before beginning any on-site activities, the Contractor shall provide the Department with its Schedule of Work in a Critical Path Method (CPM) in the form of an activity on node (AON) diagram. This CPM schedule will become the basis for claims involving delay. The Department will waive this CPM requirement for appropriate contracts through a special provision. The Contractor shall plan the Work, including the activity of Subcontractors, vendors, and suppliers, such that all Work will be performed in Substantial Conformity with its Schedule of Work. The Schedule must include sufficient time for the Department to perform its functions as indicated in this Contract, including QA inspection and testing, approval of the Contractor's TCP, SEWPCP and QCP, and review of Working Drawings.

At a minimum, the Schedule or Work shall show the major Work activities, milestones, durations, and a timeline. Milestones to be included in the schedule include: (A) start of Work, (B) beginning and ending of planned Work suspensions, (C) Completion of Physical Work, and (D) Completion. If the Contractor Plans to Complete the Work before the specified Completion date, the Schedule shall so indicate.

Any restrictions that affect the Schedule of Work such as paving restrictions or In-Stream Work windows must be charted with the related activities to demonstrate that the Schedule of Work complies with the Contract.

The Department will review the Schedule of Work and provide comments to the Contractor within 20 days of receipt of the schedule. The Contractor will make the requested changes to the schedule and issue the finalized version to the Department.

107.4.3 Projected Payment Schedule Within 21 Days of Contract Execution, the Contractor shall also provide the Department with a Projected Payment Schedule that estimates the value of the Work as scheduled, including requests for payment of Delivered Materials. The Projected Payment Schedule must be in accordance with the Contractor's Schedule of Work and prices submitted by the Contractor's Bid. The Contractor shall revise the Projected Payment Schedule to reflect the actual progress of the Work.

107.4.4 Schedule Revisions The progress of the Work shall be compared against the Schedule of Work at each Progress Meeting. If the Department determines that the Contractor's actual progress is not in Substantial Conformity with the Schedule of Work, then the Contractor shall either increase Project resources to get back on schedule or submit a revised Schedule of Work and Projected Payment Schedule to the Department.

107.4.5 No Separate Payment Unless expressly provided otherwise, the cost for providing a Schedule of Work, a Projected Payment Schedule, and all revisions and updates is Incidental to the Contract.

## 107.5 Suspension of Work

### 107.5.1 Winter Suspensions

A. Start of Winter Suspension The Contractor may request in writing that the

Department approve a Winter Suspension. If the Department determines that winter weather conditions make it impossible to perform all or specified portions of the Work, the Department will approve the Contractor's request with respect to such portions and set the start date of the Winter Suspension.

B. Monitoring and Communications During the Winter Suspension, the Contractor is responsible for monitoring weather conditions and requesting approval from the Department to resume Work as soon as possible. In any case, the Contractor shall notify the Project Manager or Resident 14 Days before the end date of the Winter Suspension specified in Section 107.5.1(C), being April 1st or May 1st, as applicable.

C. End of Winter Suspension Upon request by the Contractor or upon its own initiative, the Department may determine the end date of the Winter Suspension and the Contractor is responsible for resuming Work immediately after said end date. If the end date is not determined by the Department in writing, Winter Suspensions shall end on May 1 for Zone 1 and April 15th for Zone 2. For the purposes of the preceding sentence, Zone 1 means all areas north of Route 2 from Gilead to Bangor and Route 9 from Bangor to Calais and Zone 2 means all areas south of Zone 1 including Routes 2 and 9.

D. Impact on Liquidated Damages Liquidated Damages will not be assessed for any portion of a Winter Suspension that occurs after expiration of the Contract Time. Winter Suspensions will not otherwise affect the assessment of Liquidated Damages. For a related provision, see Section 107.7 - Liquidated Damages.

107.5.2 Suspensions Due To Uncontrollable Events Upon request of the Contractor or upon its own initiative, the Department may suspend the Work due to Uncontrollable Events. Any Delay related to such a suspension will be analyzed in accordance with Section 109.5 - Adjustments for Delay. For a related provision, see Section 101.2 - Definition of Uncontrollable Event.

107.5.3 Suspensions for Cause The Department may suspend the Work if the Contractor violates any provision of the Contract that may affect the quality, cost, timeliness or Conformity of the Work. Any Delay related to such a suspension will be an Inexcusable Delay. For a related provision, see Section 109.5 - Adjustments for Delay.

107.5.4 Suspensions for Convenience The Department may suspend the Work for

any other reason it determines is in the best interest of the Department. Any Delay related to such a suspension will be analyzed in accordance with Section 109.5 - Adjustments for Delay.

107.5.5 Pre-Suspension Work If Work is to be suspended for an extended period of time, the Contractor shall store all Materials in a manner that does not obstruct the free and safe flow of vehicular, pedestrian, railroad, or marine traffic and that protects the Materials from damage. The Department may direct the Contractor to install guardrail or other traffic control devices necessary to protect the traveling public. The Contractor shall take all precautions to prevent damage or deterioration of the Work already performed, provide suitable Drainage of the Roadway by opening ditches and Shoulder drains, erecting temporary Structures, and providing temporary erosion control where necessary. The cost of such pre-suspension Work will be analyzed in accordance with Section 109.5 - Adjustments for Delay.

For related provisions, see Sections 104.2.6 - Right to Suspend Work, 105.4.4 - Maintenance During Suspension of Work, 107.7 - Liquidated Damages, and 109.5 - Adjustments for Delay.

107.6 Completion Incentives and Disincentives When provided in the Contract, financial incentives for early Completion and disincentives for late Completion will be added to or deducted from amounts otherwise due the Contractor. Incentives/Disincentives are separate and distinct from Liquidated Damages and Supplemental Liquidated Damages.

### 107.7 Liquidated Damages

107.7.1 General Except as expressly provided otherwise in this Contract, the Contractor shall owe the Department the per diem amount specified in Section 107.7.2 - Schedule of Liquidated Damages for each Day that any portion of the Work remains incomplete after the Contract Time has expired. Liquidated Damages will be deducted from amounts otherwise due the Contractor. For related provisions, see Sections 107.1 - Contract Time, 107.5.1(D) - Winter Suspensions - Impact on Liquidated Damages, and 109.5 - Adjustments for Delay.

Permission for the Contractor or the Surety to continue and finish Work after the Contract Time has expired shall not waive the Department's rights to assess Liquidated

## Damages.

**107.7.2 Schedule of Liquidated Damages** The specific per diem rates for Liquidated Damages are set forth below. By executing the Contract, the Contractor acknowledges that such an amount is not a penalty and that the daily amount set forth in the Contract is a reasonable per diem forecast of damages incurred by the Department due to the Contractor's failure to Complete the Work within the Contract Time.

Original Contract Amount		Per Diem Amount of
From More Than	To and Including	Liquidated Damages Calendar Day
0	\$100,000	\$100
\$100,000	\$300,000	\$175
\$300,000	\$500,000	\$250
\$500,000	\$1,000,000	\$325
\$1,000,000	\$2,000,000	\$500
\$2,000,000	\$4,000,000	\$750
\$4,000,000	and more	\$1,000

**107.8 Supplemental Liquidated Damages** Supplemental Liquidated Damages, if any, will be specified by Special Provision and are separate and distinct from Liquidated Damages. Supplemental Liquidated Damages will be deducted from amounts otherwise due the Contractor.

### 107.9 Project Closeout

**107.9.1 Final Cleanup and Finishing** To prepare for Final Acceptance, the Contractor shall clean the Project and all ground, lawns, streams, Structures, and other areas adjacent to the Project of all rubbish, excess Material, temporary Structures, and Equipment. The ground shall be backfilled with Material that is generally the same as the surrounding Material, graded to drain properly, and finished such that the surface matches the surrounding surface (examples - loam and seed, compacted gravel, pavement). The Contractor must leave all areas impacted by the Work in a condition that is reasonably acceptable to the Department.

107.9.2 Notice / Inspection / Punch List The Contractor will notify the Department in writing that it considers the Project complete. As soon as practicable thereafter, the Department will inspect the Work. If Incomplete or unsatisfactory Work is noted, the Department will prepare a written list of all items that must be completed or corrected before the Physical Work is Complete (“Punch List”). The Contractor shall immediately take such measures as are necessary to complete all Punch List items.

107.9.3 Notices / Final Inspections / Physical Work Completion The Contractor shall notify the Department in writing that all Punch List items have been completed and/or corrected and that the Contractor considers the Project Complete. As soon as practicable thereafter, the Department will make another inspection of the Work. The Department and the Contractor will attend this inspection jointly. If Incomplete or unsatisfactory Work is noted, the Department will prepare a revised Punch List [which may include items not on previous Punch List(s)] and the Contractor shall immediately take such measures as are necessary to complete the revised Punch List items. Additional iterations will occur in a like manner until the Department finds that the Physical Work is Complete and in Conformity with the Contract. If the Contractor has not already done so, the Contractor will Promptly remove all temporary traffic control devices.

107.9.4 Closeout Documentation The Department will notify the Contractor in writing that the Physical Work is Complete and in Conformity with the Contract and that the Project will be finally accepted when the Closeout Documentation is received from the Contractor. The Contractor shall Deliver all Closeout Documentation, exclusive of the All Bills Paid and Request for Final Payment Letters, to the Department within 30 Days of receiving the above notification. Liquidated Damages will cease upon the physical completion of the Work. For a related provision, see Section 101.2 - Definition of Closeout Documentation.

107.9.5 Final Acceptance Upon receipt of the Closeout Documentation, exclusive of the All Bills Paid and Request for Final Payment Letters, the Department will notify the Contractor in writing that the Project is Complete and finally accepted ("Final Acceptance"), subject to the Contractor’s warranty obligations set forth in the Contract. Within 75 Days of the receipt of the documents required by Section 107.9.4, the Department will advise the Contractor in writing of the Final Quantities and any damages to be assessed for the Project. The Contractor shall resolve any Project issues that remain and provide the All Bills Paid and Request for Final Payment Letters to the Department

within 30 Days. The Department will make Final Payment, including the release of all remaining retainage, and release any escrowed bid documents within 20 Days of receipt of the above letters, which complete the Closeout Documentation. For a related provision, see Section 108.8 - Final Payment.

If the Contractor fails to resolve issues and deliver Closeout Documentation within the 30 Days provided in Section 107.9.5, the Department may provide a final notice informing the Contractor in writing that unless the Contractor Delivers all Closeout Documentation within 30 Days of the date of Receipt of final notice, the Contractor shall be in Default under the Contract. The Contractor shall become ineligible to Bid on any Department Contracts. The Department may then pursue all remedies provided by the Contract or by law, including withholding Final Payment. For a related provision, see Section 102.1.1 - Eligibility to Bid - Basic Requirements.

107.9.6 No Waiver of Legal Rights Final Acceptance does not preclude the Department from correcting any measure, estimate, or certificate made. The Department may recover from the Contractor or its Surety, or both, overpayments made due to failure to fulfill Contract obligations.

A waiver on the part of the Department of any breach of any part of the Contract is not a waiver of any other or subsequent breach.

The Contractor retains liability for latent Defects, fraud (or such gross mistakes as may amount to fraud), and warranty obligations.

## SECTION 108 - PAYMENT

Scope of Section This Section contains general provisions related to payment including measurement of quantities, progress payment, retainage, the right to withhold payment, and other payment-related terms.

### 108.1 Measurement of Quantities for Payment

108.1.1 Use of Plan Quantities Payment for all items labeled in the Bid Documents as "Plan Quantity" will be based upon the estimated quantity. The Contractor shall accept such payment as full and complete compensation for that item without physical