

subcontractor. Subcontractors may not submit a VEP except through the Contractor.

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104.13 Final Cleaning of Project Site. Before final inspection of the Project, the Project, publicly owned borrow source, and all areas affected by the Contractor in connection with the work within the right-of-way shall be cleaned of all rubbish, excess materials, temporary structures, and equipment. All surfaces and slopes, whether old or new, shall be trimmed to the cross-section, all grass and weeds, which are taller than 60 (150 mm), shall be cut, and all parts of the work shall be left in an acceptable condition. The cost of the final cleanup shall be incidental to the Contract and no separate payment will be made.

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104.14 Contractor's Responsibility for Work. Until the Contractor has achieved substantial completion, the Contractor shall have the sole and absolute responsibility for the work and to provide for the protection and safety of employees of the Department, Contractor, subcontractors, suppliers, and members of the general public. In no case, including but not limited to, supervisory acts or administration of the Contract by the Engineer, will the Contractor be relieved of the responsibility to indemnify the Department pursuant to the provisions of the Contract.

Rebuild, repair, restore, and make good all losses, injuries, or damage to any portion of the work under the control of the Contractor or due to his/her fault or inactivity, at no cost to the Department. Rebuild, repair, restore, and make good all losses, injuries, or damage to any portion of the work, not under the control of the Contractor, under agreed unit prices or as extra work under Subsection 109.04. "Items not under the control of the Contractor" shall be defined for purposes of this Subsection as Acts of God such as earthquakes, tidal waves, tornadoes, or hurricanes; catastrophic conditions such as hazardous waste materials spills, explosions, etc., or acts of the public enemy or of governmental authorities.

In case of the suspension of work the Contractor shall be responsible for the Project and shall take such precautions as may be necessary to prevent damage to the Project, provide for normal drainage and normal traffic operations, and to erect any necessary temporary structures, signs, or other facilities. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under the Contract, and shall take adequate precautions to protect new tree growth and other vegetative growth against injury.

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Section 105 - Control of Work

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105.01 Authority of the Engineer. The Engineer is the administrator of the Contract and not a supervisor of the work. All work shall be performed to the satisfaction of the Engineer, but in no case shall the Contractor be relieved of complete responsibility for the work. The Engineer will decide all questions which may arise as to the quality and acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions which may arise as to the interpretation of the Plans and Specifications; all questions as to the acceptable fulfillment of the Contract on the part of the Contractor; all disputes and mutual rights between contractors; and all questions as to compensation. At the preconstruction meeting the Engineer will determine and communicate to the Contractor the chain of command and the extent of authority Department personnel shall have to make changes to the Contract during the life of the Contract.

The Engineer has the authority to suspend the work, wholly or in part, due to the failure of the Contractor to correct conditions unsafe for the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for such periods as may be deemed necessary due to conditions the Engineer considered unsuitable for the prosecution of the work or for any other condition or reason deemed to be in the public interest.

The Engineer's authority to impose any Contract sanction, including suspension of the work, withholding payments, or the like, will not relieve the Contractor of sole and absolute responsibility for the Project, performance of the work, and the safety of workers and the general public. The Contractor saves the Department harmless pursuant to [Subsection 107.10](#) for any violation, breach, or omission of the above Contract provision.

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105.02 Authority and Duties of Inspectors. Inspectors, acting under the authority of the Engineer, are administrators of the Contract and not supervisors of the work. Inspectors employed by or designated by the Department are authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. The inspector is not authorized to revoke, alter, or waive any requirements of the Plans or Specifications. The inspector may call the attention of the Contractor to any failure of the work or materials to conform to the requirements of the Contract and shall have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Engineer. Such inspection will not relieve the Contractor from the obligation to perform the work in accordance with the requirements of the Contract.

The inspector shall in no case act as foreman or perform other duties for the Contractor, nor interfere with the management of the work by the latter. Any advice which the inspector may give the Contractor shall in no way be construed as binding the Engineer in any way or releasing the Contractor from fulfilling all of the terms of the Contract.

If the Contractor refuses to suspend operations on verbal order, a written order giving the reason for shutting down the work shall be issued. After placing the order in the hands of the Contractor's representatives in charge, the inspector shall immediately leave the job, and in such cases work done during the absence of the inspector will not be paid for and may not be accepted.

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105.03 Inspection of Work. All materials and each part or detail of the work shall be subject at all times to inspection by the Engineer. Such inspection may include mill, plant, or shop inspection, and any material furnished under these Specifications is subject to such inspection. The Engineer will be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the Engineer requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Contract. Should the work thus exposed or examined prove acceptable, the uncovering, removing, and replacing of the covering or making good of the parts removed shall be paid for as extra work. Should the work so exposed or examined prove unacceptable, the uncovering, removing, and the replacing of the covering or making good of the parts removed, shall be at the Contractor's expense.

Any work done or materials used without supervision or inspection by the Department representative may be ordered removed and

replaced at the Contractor's expense.

When any unit of government or political subdivision or any railroad corporation is to pay a portion of the cost of the work covered by this Contract, its respective representatives shall have the right to inspect the work. Such inspection shall not make any unit of government or political subdivision or any railroad corporation a party to this Contract, and shall in no way interfere with the rights of either party hereunder.

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105.04 Plans and Working Drawings. Plans consisting of general drawings and showing such details as are necessary to give a comprehensive understanding of the work specified will be furnished by the Department. The Contractor shall furnish working drawings as may be required by the Engineer. Working drawings shall not incorporate any changes from the requirements of the Contract unless the changes are specifically denoted, together with justification, and are approved in writing by the Engineer. Any change from the requirements of the Contract shall be signed and sealed by a Professional Engineer registered in Delaware. Working drawings and submittals shall be identified by the Contract number. Items or component materials shall be identified by the specific Contract item number and specification reference in the Contract.

The Contractor is responsible for the preparation of all working drawings. However, drawings submitted directly by the supplier or the Contractor's representative will be accepted by the Department, if the letter of submittal indicates that the Contractor has been notified of the submission.

Working drawings for metal structures shall consist of shop detail, erection, and other working drawings showing details, dimensions, sizes of units, and other information necessary for the fabrication and erection of metal work.

Working drawings for concrete structures shall provide such details as are required for successful prosecution of the work. These shall include plans for items such as falsework, bracing, cofferdams, formwork, masonry layout diagrams, and bending diagrams for reinforcing steel.

Working drawings for electrical and mechanical equipment shall consist of nine copies of the manufacturer's catalog cuts, drawings, wiring diagrams, etc., and shall be submitted to the appropriate District Engineer section designated at the preconstruction meeting for review. Two sets will be returned with review or corrections noted.

After all items of a particular system have been reviewed, the Contractor shall prepare an "Instruction Book" especially for the system. The "Instruction Book" shall contain an equipment list, a complete description of the equipment, the sequence of operation including inter-locking and protective features, the use of by-pass

switches, and a detailed description of all wiring circuits. The book shall also contain a recommended spare parts list, renewal parts bulletins, and instruction bulletins for the equipment furnished. Diagrams and drawings shall be of reduced size suitable for binding. A proper index listing all items shall be included. All shall be properly fastened and bound in a suitable leather or heavy plastic cover book with a title clearly shown.

Prior to final inspection, five copies of the book shall be supplied to the District Engineer. The books must be available during the period when electrical and mechanical systems are being connected and energized, and the final bound copies must reflect any changes or adjustments made during this period.

The Contractor shall submit to the Engineer the number of sets of working drawings indicated on the flowchart in Figure 105-1. Work shall not be performed or materials ordered prior to review of the working drawings. The number of sets of working drawings marked with any suggested modifications or comments that will be returned to the Contractor are shown in Figure 105-1. The other sets will be retained by the Department.

The returned drawings will be stamped as follows:

A. **"Returned for Resubmission"**. In this case, revisions or corrections must be made, and the drawings resubmitted for review.

B. **"Reviewed for General Conformity with Plans and Specifications"**. In this case if the Contractor agrees with the comments, the comments shall be incorporated, and the Contractor does not need to resubmit the drawings. If the Contractor does not agree with the comments, then the Contractor shall state this in writing and submit this to the Department within ten working days after receipt of the comments.

The Department does not review every detail of every working drawing or other submittal made by the Contractor. As a consequence, responsibility for the completeness, accuracy, and conformance to Contract requirements of all submittals rests with the Contractor. The Department accepts no responsibility for the completeness and accuracy of approved submittals or the failure of approved submittals to conform with the requirements of the Contract.

Reviewed working drawings, submittals, or resubmittals will be transmitted to the Contractor within 45 days from the date of receipt by the Department. If a railroad, the U.S. Coast Guard, Municipality, or other entity as specified in the Contract is required to review the working drawings, the reviewed working drawings will be returned within 60 days from the date of receipt by the Department. If the working drawings are not returned by the time specified, no additional compensation will be allowed except that an extension of time in accordance with [Subsection 108.07](#) will be considered. Upon completion of the work, the original drawings of structural steel work shall be supplied to the

Department.

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SUBMITTAL CHART

105.05 Conformity with Plans and Specifications. All work performed and all materials furnished shall be in reasonably close conformity with the lines, grades, cross-section, dimensions, and material requirements, including tolerances, shown on the Plans or indicated in the Specifications.

In the event the Engineer finds the materials or the finished product in which the materials used are not within reasonably close conformity with the Plans and Specifications, but that reasonably acceptable work has been produced, the Engineer will then make a determination if the work shall be accepted and remain in place. In this event, the Engineer will document the basis of acceptance which will provide for an appropriate adjustment in the Contract price for such work or materials if deemed necessary.

In the event the Engineer finds the materials or the finished product in which the materials are used or the work performed are not in reasonably close conformity with the Plans and Specifications, and the result is an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor. If there are provisions in the Contract for the acceptance of materials or work that are not in full compliance with the minimum requirements stated, pay adjustment factors reflecting the payment to be made for the work or materials will be included in the applicable Sections.

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105.06 Coordination of the Plans, Standard Specifications, Supplemental Specifications, and Special Provisions. These Specifications, Supplemental Specifications, Plans, Special Provisions, and all supplementary documents are essential parts of the Contract and a requirement occurring in one is binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Contract. In case of a discrepancy between these Contract components the governing ranking will be:

1. General Notices
2. Special Provisions
3. Plans
4. Supplemental Specifications
5. Standard Construction Details
6. Standard Specifications

The Contractor shall not take advantage of any apparent error or omission in the Contract. If the Contractor discovers an error or omission, the Engineer shall be promptly notified. The Engineer will make corrections and interpretation as necessary to fulfill the intent of the Contract. Scaled measurements shall not be used when the dimensions on the Plans are given or can be computed.

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105.07 Cooperation by the Contractor. The Contractor will be supplied with two copies of the Plans and bid proposal. One copy shall be kept at the Project site at all times. The Contractor shall give the work constant attention necessary to facilitate progress and cooperate with the Engineer in every way possible.

The Contractor shall have on the Project site at all times a competent superintendent capable of reading and understanding the Contract and experienced in the type of work being performed. The superintendent shall receive instructions, be authorized to act for the Contractor, and have full authority to execute orders or the directions of the Engineer without delay.

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105.08 Cooperation Between Contractors. The Department reserves the right to contract for and perform other or additional work on or near the limits of construction covered by the Contract. It shall be the responsibility of contractors working on the same project to coordinate their work and cooperate with each other. In case of a dispute, the Engineer will be the referee, and the Engineer's decision will be final and binding on all. When separate contracts are let within the limits of any one project, each contractor shall conduct the work without interfering or hindering the progress or completion of the work by other contractors.

Each contractor involved shall assume all liability, financial or otherwise, in connection with their contract and shall protect and save harmless the Department, from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced because of the presence and operations of other contractors working within the limits of construction of the same project.

The Contractor shall arrange the work and place and dispose of materials being used without interfering with the operations of other contractors within the limits of the same project. The work shall be coordinated with the work and sequence of other contractors.

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105.09 Utilities. Bidders are hereby notified that within the limits of the work under this Contract, several utility lines may be encountered. The location of all utilities shown on the Plans or mentioned herein are approximate locations only.

The Department will notify all utility companies, pipeline owners, railroads, or other parties known to be affected, and endeavor to have all necessary adjustments of the public or private utility fixtures, pipelines, and other facilities and appurtenances within or adjacent to the limits of construction made as soon as practicable. Notwithstanding any other provision of this Contract, the Contractor shall not proceed with the work until the Contractor has conferred with the Engineer, the utility companies, and the municipal or county

authorities in an effort to secure the most accurate and most recent information as to utility locations. As required by Chapter 8, Title 26 of the Delaware Code, the Contractor shall not begin any construction around or adjacent to utilities without notifying the utility owners at least two working days, but not more than ten working days in advance of starting the work.

Water lines, gas lines, wire lines, services connections, water and gas meter boxes, water and gas valve boxes, light standards, cable ways, signals, and all other utility facilities and appurtenances within the limits of the proposed construction that require moving, including the work involved in relocating or otherwise altering such utilities, are to be moved by others at no expense to the Contractor, except as otherwise provided for in the Special Provisions or as noted on the Plans.

Any relocation or rearrangement of utilities made for the Contractor's sole convenience shall be paid for by the Contractor.

It is understood and agreed that the Contractor has considered in the bid all the permanent and temporary utility appurtenances in their present or relocated positions as shown on the Plans or as readily discernable and that no additional compensation will be allowed for any delays, inconvenience, or damage due to any interference from the utility facilities and appurtenances or the operation of moving them.

The relocation of any existing utilities which will interfere with the proposed construction may also be in operation simultaneously with the work to be performed under this Contract.

Any damage to utility services caused by the Contractor must be repaired at the Contractor's expense. Such damage shall be repaired immediately.

Prior to performing any work on the Project, the Contractor shall contact all utility companies, pipeline owners, railroads, or other known parties affected and "Miss Utility" of DELMARVA in order to ensure that all such utilities have received notice and in order that all utility adjustments may be made.

"Miss Utility" is a report center system that enables the public, contractors, utilities, and other excavators to notify participating member utilities of planned digging activities by making one call.

"Miss Utility" is operated jointly by the Utilities Service Protection Center of DELMARVA (USPC) on behalf of the following utilities:

Adelphia Business Solutions	Long Neck Water Co.
Adesta Communications	MCI/Worldcomm
AIRCO	Mediacomm of Lower MD/DE
Artesian Water Co	MFS Network Technologies
AT&T of Delaware	Municipal Utility Commission
Bell Atlantic	NEXTLINK
Bethel Township Sewer Dept	
Broadwing	

Communications	NUI Elkton Gas
Camden-Wyoming Sewer & Water	Paradee Gas Co.
Cereza Energy, Inc	Pep-Up, Inc.
Charter Communications	Public Water Supply Co
Chesapeake Utilities	Qwest Communications
City of Delaware City	Sea Colony Water Co
City of Dover	Sharp Energy
City of Harrington	Steeplechase
City of Lewes Public Works	Waterworks
City of Milford	Suburban Cable
City of Newark	Sussex County
City of New Castle	Engineering Dept.
City of Seaford	Shores Water Co.
City of Wilmington	T&C Utility Corporation
Colonial Pipeline Co.	TCG Delaware Valley
Columbia Gas Transmission	Tidewater Utilities
Comcast Cable Communications	Town of Blades
Conectiv Comm	Town of Bridgeville
Conectiv Power Delaware	Town of Clayton
Dept.of Transportation	Town of Georgetown
Delaware Electric Cooperative	Town of Laurel
Delaware Terminal	Town of Middletown
Eastern Shore Gas	Town of Milton
Equilon Pipeline	Town of Smyrna
Falcon Classic Cable	Tristate Cable
Genuity Solutions, Inc.	Communications
GTE Global Networks, Inc	Tunnell Companies, Inc.
IXC Communications, Inc.	United CATV/Eastern
Kent County Engineering Dept	United Water
Kent County Sanitary District	University of Delaware
Level 3 Communications	Utility Systems, Inc
	Verizon
	Communications
	Viking Communications
	Williams One Call SVC
	XO Communications

The report center is essentially a message center, to which all participating parties are connected by a private line teletype network. The work location report is called in over two primary numbers, toll free, 1-800-441-8355 and 1-800-282-8555 in Delaware only. The area covered is the entire DELMARVA Peninsula.

A minimum of two but not more than ten working days advance notice of starting time is required. This assures the person calling of having the underground facility located prior to excavation.

The party reporting a digging operation is asked a standard format of questions to provide the utilities with the necessary information required to ensure an adequate location of the activity. The caller is given a ticket number for reference purposes. The center specifically locates reported areas of activity on a master map and determines the spot by grid coordinates. This information is then transmitted to

the participating parties via high speed teletype network.

Messages received are sent out immediately during normal work hours (7:30 AM to 5:00 PM, Monday through Friday). Messages received after normal working hours, Saturdays, Sundays, or holidays are taken, logged, and transmitted within one hour the next normal work day.

The work location report is received by the participating utility which immediately locates the work area by the information transmitted from the message center. The utility must then respond to the person originating the call by 1) stating they have no underground facilities at the designated location or 2) stating there are facilities in the area and dispatching a locating crew to the site and marking their underground facility with stakes, flags, and/or paint horizontally over the ground.

USPC recommended safety color codes will be used: Orange for communications, red for power, blue for water, green for sewer, yellow for gas and petroleum products, brown for slurry pipes, purple for radioactive material. This will enable the reporting party to visually see if the utility has responded.

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105.10 Construction Stakes, Lines, and Grades. The Engineer will furnish and set control and construction stakes unless otherwise specified.

The Engineer will establish right-of-way, limit of construction, and easements if needed, and construction stakes establishing right-of-way easement lines, slopes, profile grades, centerline or off-set lines, and benchmarks. The Department may furnish the Contractor with information relating the lines, slopes, and grades. The Engineer will establish structure working points, elevations, and all the necessary points and off-set to complete the structure. These stakes and marks constitute the field control by which the Contractor shall establish other necessary controls and perform the work. Before beginning of the work, the Contractor shall determine the meaning of all stakes, indicated measurements, and marks provided by the Department.

The Engineer will also perform preliminary and final cross-sections of borrow pit sites and cross-sections for bedrock and undercut excavation.

The Contractor is responsible for the preservation of all stakes and marks. The labor cost of the survey crew replacing disturbed stakes and marks will be deducted from the payment due for the work.

The Department is responsible for the accuracy of lines, slopes, grades, and other engineering work set forth under this Subsection. The Department will not be responsible for staking delays unless the Engineer is provided ten calendar days notice prior to beginning work on an item and thereafter 48 hours notice that stakes are

needed.

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105.11 Removal of Defective and Unauthorized Work. Defective or unauthorized work shall be removed and disposed of immediately upon rejection. Work done without lines and grades being given, or work done beyond the lines and grades shown on the Plans or any change order or supplemental agreement or work done without written authority will be considered as unauthorized and will not be measured or paid for by the Department. Work so done may be ordered removed and replaced at the Contractor's expense.

Failure of the Contractor to remove and properly dispose of rejected work immediately after receiving written notice to do so shall be sufficient cause for the termination of the Contract. Furthermore, the Engineer will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from the amount due or to become due the Contractor.

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105.12 Load Restrictions. The Contractor shall comply with all legal and contractual load restrictions in the hauling of materials or equipment on public roads. A hauling permit or other special permit will not relieve the Contractor of liability for damage to public or private property which may result from the movement of such loads or equipment.

Vehicles transporting construction materials to Department projects shall not exceed the gross vehicle weight (GVW) or licensed weight, if less, as specified in the Delaware Code. Materials inspection weigh tickets will not be issued by Department personnel for GVWs in excess of the allowable maximum.

Payment for materials delivered to the Project shall not exceed the allowable GVW minus the truck tare weight. An average tare weight may be established on a basis approved by the Engineer so that empty weighing is not necessary before every load. No payment will be made for any excess material weight.

It shall be the responsibility of the Contractor to notify its subcontractors, vendors, and suppliers of this requirement.

The maximum GVW for different vehicle axle configurations is as follows; provided that in the case of three-axle vehicles the extra weight fee has been paid and is so noted on the registration card:

Customary Values

<i>Single Unit Values</i>	<i>GVW, Maximum</i>
2-axle vehicle (e.g., 2-axle dump truck)	40,000 lb.
3-axle vehicle (e.g., 3-axle dump truck)	65,000 lb.
4-axle vehicle (e.g., 4-axle dump truck)	73,280 lb.

4-axle vehicle (e.g., 4-axle dump truck) 73,280 lb.

Tractor-Semi-Trailer Combinations

3-axle combination unit 60,000 lb.

4-axle combination unit 70,000 lb.

5-axle combination unit 80,000 lb.

* When extra weight fee has been paid and is so noted on registration card.

Metric Values

Single Unit Values

GVW, Maximum

2-axle vehicle (e.g., 2-axle dump truck) 18 144 kg

3-axle vehicle (e.g., 3-axle dump truck) 29 484 kg

*31 752 kg

4-axle vehicle (e.g., 4-axle dump truck) 33 240 kg

Tractor-Semi-Trailer Combinations

3-axle combination unit 27 216 kg

4-axle combination unit 31 752 kg

5-axle combination unit 36 288 kg

* When extra weight fee has been paid and is so noted on registration card.

The Contractor shall be responsible for all damages done by hauling equipment.

105.13 Maintenance During Construction. The Contractor shall maintain the work during construction and until the Project is accepted. This maintenance shall be performed every day continuous, and effective with adequate equipment and forces to keep the roadway and structures in a satisfactory condition.

The Engineer will notify the Contractor if there is a failure to comply with these provisions. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of the notice, the Engineer may proceed to maintain the Project. The entire cost of this maintenance will be deducted from monies due or to become due the Contractor.

If the Contract involves the placement of material on or the use of a previously constructed subgrade, base course, pavement or structure, the previously constructed work shall be maintained by the Contractor during construction operations.

The cost of maintenance work during construction and before the

Project is accepted shall be incidental to the Contract.

In the event that the Contractor's work is ordered shut down for failure to comply with the provisions of the Contract, the Contractor shall maintain traffic, protect and maintain the roadway and structures, and provide ingress and egress for local residents as may be necessary during the period of suspended work or until the Contract has been declared in default.

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105.14 Opening Sections of the Project to Traffic. The Engineer may order certain sections of work to be opened to traffic or other use prior to completion or acceptance of the work. Opening these sections shall not constitute acceptance of work or waiver of any Contract provisions.

On those sections opened, the cost of establishing maintenance and protection of traffic, maintaining the roadway or other work to accommodate traffic or other use, and repairing damage to the work that occurs after opening will be determined as follows:

- A. If the Contract provided for total road closure, and the opening is not due to the fault or inactivity of the Contractor, the added costs will be at the Department's expense. Compensation for these added costs will be in accordance with [Subsection 109.04](#).
- B. If the opening was designated as part of the Contract in "phased" or "staged" construction (only when defined as such in the Contract), then the added work will be performed at the Department's expense unless damage was reimbursed by Contractor's insurance. Compensation for this added work will be in accordance with [Subsection 109.04](#). This does not apply to Contracts that do not have defined "phased" or "staged" construction.
- C. If the opening was due to the fault or inactivity of the Contractor, then the work will be performed at no additional expense to the Department. If the Contractor is dilatory in completing features of the work according to the Contract or progress schedule, the Engineer will give written notification establishing a time period for completing these features. If the Contractor fails to complete or make a reasonable effort to complete the work according to the written notification, the Engineer may order all or a portion of the Project opened to traffic. The Contractor shall not be relieved

of liability or responsibility for maintaining the work and shall conduct the remaining construction operations with minimum interference to traffic at no additional expense to the Department for any added cost of the work.

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105.15 Claims for Adjustment and Disputes. In any case where the Contractor believes that extra compensation is due for work or material not clearly covered in the Contract or not ordered by the Engineer as an extra, or the Contractor feels that it has encountered unusual and unforeseen conditions beyond its control, as defined herein, not discoverable by reasonable inspection and diligence on the Contractor's behalf and if all other Contract provisions have been complied with, the Contractor shall notify the Engineer orally or in writing of its intention to make claim for such extra compensation before the Contractor begins the work on which the claim is based on. If written notification is not given within five working days and the Engineer is not afforded proper facilities by the Contractor for keeping strict account of actual costs as required, then the Contractor waives the claim for extra compensation.

A. Contractor Written Notification. The written notification to the Engineer shall include:

1. the date of occurrence and the nature and circumstances of the occurrence that constitute a change;
2. name and title of Department representatives knowledgeable of the claimed change; and
3. particular elements of Contract performance for which additional compensation may be sought under this Section.

Such notice by the Contractor, and the fact that the Engineer has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim. Nothing contained in this Subsection shall be construed as establishing any claim contrary to the terms of [Subsection 104.05](#) or any other provision of the Specifications.

B. Engineer Response. Within ten calendar days after receipt of notice, the Engineer will respond in writing to the Contractor to:

1. confirm that a change occurred and, it shall be allowed and paid as an extra as provided herein; or
2. deny that a change occurred and, direct the Contractor to follow the claims submittal procedure as outlined; or
3. advise the Contractor that adequate information has not been submitted to decide whether B.1. or B.2. above applies, and indicate the need for more

information for further review. The Department will respond to such additional information within ten calendar days of receipt from the Contractor; or

4. advise the Contractor that the District will review the claim, after obtaining the claims submittal as described herein.

Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide requested additional information in accordance with this clause.

C. Claim Submittal. The Contractor must submit a formal claim in writing within 60 calendar days after the item claimed has been completed. The Contractor can only recover, and the formal claim shall only consist of those items allowed under [Subsection 105.19](#) and must contain:

1. the precise nature and basis for the claim;
2. each fact upon which the Contractor relies, to support the claim;
3. the precise reason the Contractor believes the claim should be granted;
4. the language in the Contract upon which the Contractor relies, in support of the claim;
5. the amount of money or nature and extent of relief to which the Contractor believes it is entitled;
- and
6. any other factors which the Contractor believes support the claim.

In complying with this requirement, the Contractor must certify the claim using the following form:

The undersigned is duly authorized to certify this claim on behalf of (the Contractor).

(The Contractor) certifies that this claim is made in good faith, that the supporting data are accurate and complete to the best of the Contractor's knowledge and belief, and that the amount requested accurately reflects the Contract adjustment for which (the Contractor) believes that the Department is liable.

(THE CONTRACTOR)

By:

(Name)
(Title)

Date of Execution:

The Contractor agrees to follow the procedure described in this Section and that any claimed dollar amount and/or relief sought, not made pursuant to this Section, within the time limits prescribed shall

be forever waived and not raised at any subsequent meeting or hearing dealing with the claim. The Department shall establish a claims procedure to be followed, consistent with these Specifications, which claims procedure shall provide the means and methods by which the Contractor and the Department shall process the claim.

Claims and disputes submitted in accordance with this Section, will be first reviewed fully at the District level. Within 30 calendar days after receiving the claim submittal, the District Engineer will respond, in writing, with the District's decision. If additional time is required by the District to review the claim, the District Engineer will notify the Contractor. Rejection of the claim or dispute by the District may be appealed to the Claims Committee for review. The Contractor shall give notice of the appeal, in writing, within ten calendar days of the rejection by the District Engineer. The Claims Committee will conduct a claim review meeting attended by representatives of the Contractor and the District. The Committee will conduct the claims review meeting within 45 calendar days after receiving the Contractor's notice of appeal. The proceedings of the Claims Hearing will be recorded by a Court Reporter. The cost associated with the Court Reporter will be shared equally by the Department and the Contractor. A copy of the record of the Claims Hearing will be made available to the Contractor.

Within 15 calendar days of the Hearing, the Committee's Chairperson will notify the Contractor, in writing, of the Committee's decision.

The Contractor may appeal the Claims Committee's decision to the Chief Engineer of the Department requesting to proceed with the arbitration process as outlined in [Subsection 105.17](#). The Contractor shall give notice of the appeal to the Claims Committee's Chairperson, in writing, within ten calendar days after receiving the Claims Committee's decision.

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105.16 Chief Engineer's Decision. After receiving the written notification from the Contractor, appealing the Claims Committee's decision and requesting an Arbitration hearing as outlined in [Subsection 105.17](#), the Chief Engineer will notify the Contractor, in writing, within 30 calendar days of the receipt of the notice regarding the claim. The decisions upon all claims by the Chief Engineer shall represent the findings of the Department.

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105.17 Arbitration. Any claim, properly presented pursuant to [Subsection 105.15](#), processed through the claims procedure, and finally decided by the Chief Engineer pursuant to [Subsection 105.16](#), in the absence of agreement by the Contractor and the Department as to the resolution thereof, and upon the demand of either party delivered in writing to the other within 30 calendar days from the date of the written decision by the Chief Engineer, as provided in the aforesaid [Subsection 105.16](#); shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the

American Arbitration Association then in effect; except as otherwise modified by these Specifications. The arbitration proceeding may involve presentation of facts or such portions thereof as have previously been presented at prior administrative hearings held pursuant to Subsection 105.15 herein or may be based entirely upon the record, as established therein. The record established at prior administrative hearings pursuant to Subsection 105.15 shall be specifically admissible at such arbitration proceedings and such facts as have been established shall be specifically binding upon the parties; with the exclusion of opinions and conclusions thereon. Such arbitration shall be specifically based upon the claim presented at prior administrative hearings and no material, information, fact, and/or claim not presented at such hearings held pursuant to said [Subsection 105.15](#) shall be admissible at any arbitration conducted pursuant to this Section. The arbitrators, in their final ruling on the claim shall include a summary of the evidence, findings of fact based upon the evidence, conclusions of law, and a concise statement of the relief awarded. This agreement to arbitrate shall be strictly enforceable as provided under Chapter 57, Title 10 of the Delaware Code, as amended.

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105.18 Contractor and Subcontractor/Supplier Disputes. Any dispute arising between the Contractor and its subcontractor/supplier concerning payments held in trust, as required by Chapter 8, Title 17 of the Delaware Code, shall be resolved by arbitration. The Department shall not serve as the arbiter of such disputes, but shall, in the absence of agreement between the parties, designate the American Arbitration Association to resolve the matter.

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105.19 Claims. All claims shall be submitted according to the procedure established in Subsection 105.15. Submit a written claim notification a maximum of five working days after the original oral notification. Provide in the written notification a brief statement of the reason and basis for the claim and a list of the items for which additional compensation is being claimed in order to permit the Engineer to keep a strict account of actual costs incurred. Within 60 calendar days after that portion of the work upon which the claim is based is completed, the Contractor shall submit to the Department an itemized list of labor, equipment, and materials used and such other costs as specifically allowed pursuant to this Subsection.

The Contractor shall not be entitled to recover any costs other than those contained and allowed herein. As described below, A. through G. shall cover all direct and indirect costs allowed and H. identifies all non-allowable costs.

- A. Labor. In accordance with [Subsection 109.04](#) D.1.
- B. Bond, Insurance, and Tax. In accordance with [Subsection 109.04](#) D.2.

- C. Materials. In accordance with [Subsection 109.04](#) D.3.
- D. Equipment. In accordance with [Subsection 109.04](#) D.4.
- E. Percentage Markups. In accordance with [Subsection 109.04](#) D.6. and [109.04](#) D.7.
- F. Subcontractor Claims. Any claim submitted by the Contractor on behalf of a subcontractor shall be submitted according to [Subsection 105.15](#) and shall be solely limited to the list of all direct or indirect costs permitted by A. through D. above. For work approved by the Department, the subcontractor will be allowed a percentage markup as permitted by [Subsection 109.04](#) D.6. and [109.04](#) D.7. The Contractor will be allowed an additional percentage markup as permitted by [Subsection 109.04](#) D.8. to be computed on the final sum total of such subcontractor cost claimed under A. through D. above for portions of subcontractor work approved by the Department.
- G. Waiver of Liquidated Damages. A claim, not for additional costs, but for a waiver by the Department of an assessment of liquidated damages, in whole or in part, may also be made by the Contractor as part of this Subsection.
- H. Non-allowable Damages or Expenses. The expenses listed above as A. through G. shall constitute the sole cost(s) and expense(s) to which the Contractor shall be entitled on any claim submitted for additional compensation or settlement of any claim made under these Specifications, except as further provided in [Subsection 105.21](#). The parties agree that the Department will have no liability for the following items of damage or expense:
 - 1. Profit in excess of that provided herein,
 - 2. Loss of profit,
 - 3. Labor and equipment inefficiencies,
 - 4. Home office overhead in excess

of that provided herein,
5. Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities and insolvency,
6. Indirect costs or expenses of any nature,
7. Attorneys fees, claim preparation expenses or costs of litigation, and
8. Interest on any claimed amounts.

- I. Any claim submitted shall not affect in any manner the imposition or waiver of liquidated damages, except that any liquidated damages shall be waived for any delay for which a time extension is granted in accordance with [Subsection 108.07](#).

- J. The Contractor agrees to make its accounting records and cost information available at the time of submission of the claim and such other records as the Department may require, in order to determine the validity and amount of each item claimed. They shall be open to inspection or audit by representatives of the Department during the life of the Contract and for a period of not less than three years after the Contractor's acceptance of Final Payment as set forth in [Subsection 109.10](#) and the Contractor shall retain such records for that period. Where payment for materials, equipment, or labor is based on the cost of forces other than the Contractor's, the Contractor shall make every reasonable effort to ensure that the cost records of such other forces are open to inspection and audit by representatives of the Department on the same terms and conditions as the cost records of the Contractor. Payment for the cost of such forces may be deleted if the records of such third parties are not made available to the Department's representatives. If an audit is to be commenced, the Contractor is to be provided with a reasonable notice of the time when such audit is to begin. In case all

or a part of such records are not made available, the Contractor understands and agrees that any items not supported by reason of such unavailability of the records will not be allowed, or if payment therefor has already been made, the Contractor shall refund to the Department the amount so disallowed.

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105.20 Project Acceptance. Final acceptance will not occur until completion of the Project in accordance with [Subsection 101.16](#). However, at the request of the Contractor and at the sole discretion of the Engineer, the Contract time may be stopped without all the required documents, certificates, or proofs of compliance.

When the Contract time is stopped, the Contractor is to expeditiously provide the exempted documents, certificates, or proofs of compliance. Final acceptance and payment will not be made until all documents, certificates, or proofs of compliance have been executed and delivered to the Engineer.

- A. **Partial Project Acceptance.** When a unit or portion of the Project, such as a structure, interchange, or section of road or pavement is substantially completed, the Contractor may request final inspection of that unit or portion. If the unit or portion has been completed in accordance with the Contract, the Engineer may accept it as completed. The decision to make partial acceptance of a unit is solely at the discretion of the Engineer. Partial acceptance will not void or alter any of the terms of the Contract.
- B. **Project Acceptance.** Upon receiving notice from the Contractor of Project completion, the District will make a semi-final inspection. During this inspection, the District will note by stations and in detail all work or conditions requiring correction. The Contractor shall immediately prosecute the corrective work. When completion of the noted corrections are completed to the satisfaction of the District, a final inspection will be arranged. The Engineer will make a final inspection of the work to certify the Project can be used, occupied, or operated for its intended use. The Engineer will note any further corrective measures as deemed necessary. The Contractor shall prosecute corrective measures immediately. When the work is satisfactorily completed, together with receipt of proper documentation as

noted herein, the Engineer will notify the Contractor in writing of the date of acceptance of the Project.

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105.21 Claims for Delay Damages. The Department may grant time extensions in the performance of work for delays caused by acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or other causes, only when these delays are not the fault or responsibility of the Contractor, are beyond the Contractor's control, and could not have been anticipated by the Contractor. For such delays that are also beyond the control and not the fault of the Department, the Contractor shall be entitled to a time extension, but shall not be entitled to recover any damages resulting from such delays.

In the event a delay is not caused by the Contractor's fault or negligence but is caused wholly by actions of the Department, or determined by an arbitrator and/or judicial proceeding to be the Department's sole responsibility, an extension of time shall be granted in an amount equivalent to the actual critical delay caused by the Department, and the Contractor shall not be entitled to any additional compensation except as allowed herein.

All direct and indirect costs allowed are covered in A. below, and B. below identifies all non-allowable costs. Compensation provided by A. below shall not be duplicative of compensation already provided as part of [Subsection 105.19](#) or [109.04](#):

- A. **Allowable Direct and Indirect Expenses.** Only the additional costs associated with the following items will be recoverable by the Contractor for delay compensation:
 1. Extended Field Overhead. Field overhead costs necessary for the prosecution of the work during the delay period, as follows:
 - a. General Field Supervision. Such costs include but are not limited to general field supervision, assistants, watchman, clerical and other field support staff. Compute these labor costs in accordance with [Subsection 109.04](#) D.1. For salaried personnel, calculate the rate of wage (or scale) actually paid by dividing the weekly salary by seven days per week.
 - b. Field Office Facilities and Supplies. Such costs include but are not limited to field office trailers, tool trailers, office equipment rental, temporary toilets, and other incidental facilities and supplies. Compute these costs on the basis of the actual added costs incurred by the Contractor to provide

these services as a result of the delay.

- c. Maintenance of Field Operations. Such costs include but are not limited to telephone, electric, water, and other similar expenses. Compute these costs on the basis of the actual added costs incurred to maintain these services as a result of the delay. These extended field overhead costs are not duplicative of those compensated in [Subsection 109.04 D.7.](#)
2. Labor. For all necessary, non-salaried, idle labor that must remain on the Project during such periods of delay due to collective bargaining contracts or other reasons approved by the Engineer, compute the labor costs in accordance with [Subsection 109.04 D.1.](#)
3. Bond, Insurance, and Tax. In accordance with [Subsection 109.04 D.2.](#)
4. Equipment. For any idle equipment other than small tools that must remain on the Project site during delays, the Contractor is to receive compensation at the rate calculated in [Subsection 109.04 D.4.](#) Should it not be necessary for machinery or equipment to remain on the Project during delays, the Contractor is to receive transportation costs to remove the machinery or equipment and return it to the Project at the end of the delay period.
5. Materials. Costs for material escalation due to the delay or the cost of storage of materials due to the delay are recoverable. Obtain the Engineer's approval prior to storing any material due to a delay.
6. Percentage Markups. An additional 10% markup of the total of 1., 2., 3., and 4. above will provide full compensation for home office overhead and any other costs attributed to the delay for which no specific allowance is herein provided. Payment under this Subsection constitutes full compensation for all items of expense related to such delay. No profit is allowed under this Subsection. The markup is not duplicative of those provided in [Subsections 105.19 E., 109.04 D.6., and 109.04 D.7.](#)
7. Records. Payment will not be made for delays until the Contractor has furnished the Engineer with duplicate itemized statements of the cost as hereinabove specified and detailed as follows:
 - a. Name, classification, date, daily hours, total hours, rate, and extension for each worker and foreman.
 - b. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of

machinery and equipment.

c. Transportation costs.

Cost of bonds, property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; and social security taxes.

The Engineer will compare the Department's records with those furnished by the Contractor and make any necessary adjustments. When these records are agreed upon and signed by both parties, said records become the basis of payment for the expenses incurred, but do not preclude subsequent adjustment based on a later audit by the Department.

The Contractor's cost records pertaining to expenses under this Subsection shall be open to inspection or audit by representatives of the Department as provided in [Subsection 105.19 J](#).

- B. **Non-Allowable Damages or Expenses.** The expenses listed in A. above shall constitute the sole cost(s) and expense(s) to which the Contractor shall be entitled on any delay claim submitted for additional compensation or settlement of any claim made under these Specifications. The parties agree that the Department will have no liability for the items listed in [Subsection 105.19 H.1. through H.8.](#)

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Section 106 - Control of Material

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106.01 Source of Supply and Quality Requirements. All materials used shall meet the requirements of the Contract. The Contractor