

requested, copies of such written permission shall be furnished to the Engineer.

Storage and plant sites shall be restored to their original condition by and at the Contractor's expense.

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106.08 Unacceptable Materials. Materials not conforming to the requirements of the Contract will be rejected and removed immediately from the Project unless the defects have been corrected and approved by the Engineer.

106.09 Disposal of Unacceptable Materials. All waste materials removed by earthwork operations shall become the property of the Contractor and shall be removed from the Project or otherwise disposed of as specified. Unless specific disposal sites for waste materials generated by the clearing and grubbing operation are designated on the Plans, the Contractor shall procure disposal sites. Such disposal sites shall be submitted to and approved by the Engineer prior to utilization by the Contractor. The submittal shall include a plan of the disposal area, proposed sediment and erosion control devices, existing and proposed final contours, and proposed security measures. All permit requirements such as those required by the Department of Natural Resources and Environmental Control (DNREC) and the U.S. Army Corps of Engineers shall be met by the Contractor when preparing and utilizing off-site disposal areas. The Contractor shall submit a similar proposal for use of designated disposal sites if such detail is not included in the Contract documents. Costs for preparing these plans are incidental to [Section 201](#). For disposal sites designated on the Plans, payment will be made separately under applicable bid items for all necessary erosion and sediment controls, seeding, and mulching. For Contractor-procured disposal sites, such costs are incidental to [Section 201](#).

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106.10 Department-Furnished Material. Material furnished by the Department will be delivered or made available to the Contractor at locations specified in the Contract.

The cost of handling and placing Department-furnished materials after they are delivered to the Contractor shall be included in the Contract price for the item in which they are used. Deductions will be made from any monies due for any shortages, deficiencies, and damage that may occur to the material after delivery. Demurrage charges resulting from the Contractor's failure to accept the materials at the designated time and location of delivery will also be deducted from monies due the Contractor.

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Section 107 - Legal Relations and Responsibility to the Public

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107.01 Laws to be Observed. The Contractor is required to investigate and shall strictly comply with, all Federal, State, or county laws and regulations, and city or town ordinances and regulations. The Contractor shall indemnify and save harmless the State of Delaware, the Department of Transportation, its Secretary and all officers, agents, and servants against any claim or liability arising from or based upon the violation of any such laws, ordinances, regulations, orders, or decrees whether by its employees.

If the Contractor should discover any provisions in the Contract that are contrary to or inconsistent with any law, ordinance, regulation, order, or decree, the Contractor shall immediately report it to the Engineer in writing.

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107.02 Permits, Licenses and Taxes. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.

Prior to the execution of any contract, the successful bidder shall be required to show that it has satisfied the requirements of Sections 2502 and 2503, Chapter 25, Title 30 of the Delaware Code, and if the bidder is a non-resident corporation, that the bidder has complied with the requirements of Subchapter XIV, Title 8 of the Delaware Code, Annotated Revised 1974, and as amended.

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107.03 Patented Devices, Materials, and Processes. The Contractor and the surety shall hold and save harmless the State, the Department, their officers or agents, in accordance with the terms of these Specifications, from any and all claims because of the use of any patented design, device, material, or process in connection with the work agreed to be performed under this Contract. Any patent agreement between patentee and the Contractor shall be furnished to the Department.

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107.04 Contractor's Responsibility for Utility Property and

Services. At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, power companies, or other utilities, or are adjacent to other properties, facilities, or appurtenances, damage to which might result in considerable expense, loss, or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made.

In the event of interruption to water or utility services as a result of accidental breakage, or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority. The Contractor shall cooperate with said authority in the restoration of service as promptly as possible. No work shall be undertaken around fire hydrants until appropriate plans for continued service have been approved by the local fire authority.

Fire hydrants on or adjacent to the highway shall be kept accessible to fire apparatus at all times and no material or obstruction shall be placed within 15' (4.5 m) of any such hydrant. Work shall be left entirely accessible at all points to fire apparatus at all times.

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107.05 Federal Aid Participation. When the United States Government pays all or any portion of the cost of a project, the Federal laws authorizing such participation and the rules and regulations made pursuant to such laws must be observed by the Contractor, and the work shall be subject to the inspection of the appropriate Federal agency.

Such inspection shall not make the Federal Government a party to this Contract and will in no way interfere with the rights of either party hereunder.

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107.06 Construction Safety, Health, and Sanitary Standards. It is a condition of all contracts, and shall be made a condition of each subcontract entered into pursuant to the prime contract, that the Contractor, and any subcontractor, shall not require any person employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to such person's health or safety.

The Contractor shall provide and maintain in a neat and sanitary condition, such accommodations for the use of its employees as may be necessary to comply with the requirements of the State and local Boards of Health, or of other bodies or tribunals having jurisdiction.

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107.07 Public Convenience and Safety. In performing the work, the Contractor shall interfere as little as possible with traffic. The Contractor shall provide and maintain ingress and egress for all residences and places of business located along the construction

route. So far as practicable, materials stored upon the highway shall be placed so as to cause as little obstruction to the traveling public as possible. If, as determined by the Engineer, it is necessary to keep the road or any portion of it open to travel during the construction thereof, the Contractor shall so perform the work and provide such means that travel will not be obstructed or endangered. The Contractor shall provide and maintain in an acceptable condition such temporary roadways and bridges as may be necessary to accommodate the traffic using or diverted from the roadway under construction, and shall provide and maintain in a safe condition temporary approaches to and crossing of intersecting highways. All sidewalks, gutters, sewers, inlets, and portions of the highway adjoining the roadways under construction shall not be obstructed more than is absolutely necessary.

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107.08 Use of Explosives. When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life or property, including new work. The Contractor shall be responsible for all damage resulting from the use of explosives.

All explosives shall be stored in a secure manner in compliance with all laws and ordinances, and all such storage places shall be clearly marked. Where no local laws or ordinances apply, storage shall be provided satisfactory to the Engineer and not closer than 1000' (300 m) from the road or from any building or camping area or place of human occupancy.

The Contractor shall notify each public utility company having structures in proximity to the site of the work of its intention to use explosives. Such notice shall be given sufficiently in advance to enable the companies to take such steps as they may deem necessary to protect their property from injury.

The use of explosives will not be permitted within 200N (65 m) of any existing, newly finished, or partly finished structure on a project unless authorized in writing by the Engineer. No explosives shall be stored overnight on the Project.

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107.09 Protection and Restoration of Property. The Contractor shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the roadway not designated on the Plans for repair, removal, or construction. The Contractor shall take the precautions necessary to prevent damage to pipes, conduits, and other underground structures, and shall protect from disturbance or damage all land monuments and property markers until authorized by the Engineer. Any land monument or property markers damaged or disturbed shall be located and reset by Registered Land Surveyors or a Registered Professional Engineer. The Contractor shall not injure or destroy trees or shrubs outside the limits of the graded roadway section, nor remove or cut them without proper authority. Where any direct or

indirect damage is done to public or private property on account of any act, omission, neglect, or misconduct in the execution or non-execution of the work on the part of the Contractor, such property shall be restored at the Contractor's expense to a condition similar or equal to that existing before such damage.

In case of the failure on the part of the Contractor to restore such property or make good such damage, the Engineer may upon giving 48 hours notice proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary, and the cost thereof will be deducted from any monies due to the Contractor under the Contract.

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107.10 Responsibility for Damage Claims. The Contractor shall assume the responsibility and liability for, and shall indemnify and save harmless the Department, its officers, and employees, from and against all suits, actions, claims, and all damages, direct or indirect, of whatever nature, caused to any person(s) or property or resulting to the work from any act, work, or plan performed or submitted by the Contractor or upon its behalf; including but not limited to responsibility of the Contractor to provide for the protection and safety of all persons and property. This indemnification and save harmless requirement shall apply, but not be limited to, all suits, actions, claims brought, and all damages resulting from any death, injury, or damage received or sustained by any person(s), third person(s), or property based upon:

- A. Operations of the Contractor, including but not limited to work performed; neglect in safeguarding the work; use of unacceptable materials; any act, work, or plan performed or submitted by the Contractor on its behalf or resulting from performance, nonperformance of the work, or any omission, neglect, or misconduct occurring during the course of the Contract.
- B. Any claim(s) or amount(s) recovered from any infringement(s) of patent, trademark, or copyright.
- C. Any claim(s) or amount(s) arising or recovered under the "Workers Compensation Act", for any violation or alleged violation of any law, ordinance, rule, regulation, order, or decree.
The Department may withhold as retainage for the use of the State to pay any amount claimed or anticipated, as determined by the Engineer, except that such money shall not be withheld when the Contractor produces satisfactory evidence that it is adequately protected by public liability and property damage insurance. In any event, the surety shall be liable to pay any amount

recovered as a result of any suit, action, claim, injuries, or damages sustained and until such time as the matter has been settled or otherwise legally resolved.

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107.11 Furnishing Right-Of-Way. The Department will be responsible for the securing of all necessary rights-of-way in advance of construction. Any exceptions will be indicated in the Contract.

107.12 Personal Liability of Public Officials. The Department, Director, Engineer, or their authorized agents will incur no personal liability as a result of carrying out any of the provisions of the Contract, as the result of exercising any power or authority granted to them thereby, or as the result of any act by the Contractor. In such matters they act as the agents and representatives of the State.

107.13 No Waiver of Legal Rights. Upon completion of the work, the Department will expeditiously make final inspection and notify the Contractor of acceptance. Such final acceptance, however, shall not preclude or estop the Department from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Department be precluded or estopped from recovering from the Contractor or its surety, or both, such overpayment as it may sustain, or recovering the cost of the failure on the part of the Contractor to fulfill its obligations under the Contract. A waiver on the part of the Department of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor, without prejudice to the terms of the Contract, shall be liable to the Department for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Department's rights under any warranty or guaranty.

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107.14 Hazardous Material. If any abnormal condition is encountered or exposed that indicates the presence of a hazardous material or toxic waste, construction operations shall be immediately suspended in the area and the Engineer notified. Work shall be continued in other areas of the Project unless otherwise directed by the Engineer.

Abnormal conditions include but are not limited to the following: presence of barrels, obnoxious odors, excessively hot earth, smoke, or any other condition that indicates a hazardous material or toxic waste. The conditions shall be treated with extreme caution.

Disposition of the hazardous material or toxic waste shall be made under the requirements and regulations of the applicable State agency.

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Section 108 - Prosecution and Progress

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108.01 Subletting of Contract. The Contractor shall not subcontract, sublet, sell, transfer, assign, purchase work or materials from an organization other than its own, or otherwise dispose of the contract or contracts or any portion thereof, or of its right, title or interest therein, without written consent from the Engineer. The Contractor shall perform with its own organization work amounting to not less than 50% of the total Contract bid price, except that any items designated in the Contract as "specialty items" may be performed by subcontract and the cost of any such specialty items so performed by subcontract may be deducted from the original total bid price before computing the amount of work required to be performed by the Contractor with its own organization. Only the original Contract bid price and the value of subcontracted work approved by the Engineer will be used to compute the percentage of subcontracted work.

Adjustments in quantities or additional items of work will not require an adjustment of the percentage computed as described above. The Contractor's organization shall be construed to include only those workers on its payroll, employed and paid directly by the Contractor, and equipment owned or rented by the Contractor with or without the operator(s) as is consistent with normal industry practice.

If the Contractor to whom a contract is awarded proposes to subcontract any part of work, the scope and value of the work to be done by the subcontractor shall be outlined. The cost of materials to be used by the subcontractor shall be outlined. The cost of materials to be used by the subcontractor shall be included in the value of the subcontracted work. A subcontractor shall not subcontract further a portion of the work intended to be done by the original subcontractor organization.

All traffic control work and related items shall either be performed entirely by the Contractor's own organization or totally subcontracted. Maintenance of the equipment shall not be subject to this requirement.

When the Contractor has sublet a portion of the Contract or a bid