

SECTION 107 LEGAL RELATIONS AND RESPONSIBILITIES

107.01 LAWS TO BE OBSERVED.

It is the Contractor's responsibility to keep fully informed with, and observe and comply with all of the following that, (1) affects in any manner those engaged or employed on the Project, or (2) affects the conduct of the work on the Project:

Federal and State laws; local laws and ordinances; and regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority, including legal requirements governing the safety, health, sanitation, and performance of the contract in general.

The Contractor shall protect and indemnify the Department and its representatives against any claim or liability arising from the violation of any of the above listed items, whether violated by the following companies or any employees of the following companies:

The Contractor; Subcontractor(s) at any tier; suppliers of materials or services; and any others engaged by the Contractor.

The Contractor, without cost to the Department, has the sole responsibility to provide, inspect and maintain all safeguards, safety devices, protective equipment, safety programs, and provide actions necessary to reasonably protect the life, health, and property of the Contractor, subcontractors, the state, the public and each of the employees, officers, assigns, and agents of the Contractor, subcontractors and the state, engaged or employed on the Project.

Any inspector of the Occupational Safety and Health Administration or other legally responsible agency involved in safety and health administration shall be provided unrestricted access to the work site.

107.02 PERMITS, LICENSES, AND TAXES.

A. **General.** The Contractor shall obtain 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.

These charges, fees, or taxes may include, but are not limited to, State sales taxes, City sales taxes, and TERO or Indian Reservation taxes or requirements.

No claim shall be made to the Department for reimbursement of these taxes, charges, fees, or for any costs related in meeting TERO or Indian Reservation requirements. All these costs shall be included in the bid prices for the Contract items.

- B. **United States Army Corps of Engineers Water Usage Permit.** All waterways listed below will require a United States Army Corps of Engineers Water usage permit in addition to the North Dakota State Water Commission permit. It is the Contractor's responsibility to obtain the permit from the Corps of Engineers after the Contract has been awarded. Corps of Engineers Form 4345 must be completed and submitted to the Corps by the Contractor to obtain the permit prior to obtaining water from the waterways listed:

MISSOURI RIVER – from the Montana-North Dakota state line to the North Dakota-South Dakota state line

YELLOWSTONE RIVER – from the Montana-North Dakota state line to its mouth

UPPER DES LACS LAKE

RED RIVER OF THE NORTH – from Wahpeton, ND, to the Canadian border

BOIS DE SIOUX RIVER – from the South Dakota-North Dakota state line to Wahpeton, ND

JAMES RIVER – from Jamestown, ND, to the North Dakota-South Dakota state line

For additional information from the Corps of Engineers, contact:

Bismarck Regulatory Office
P.O. Box 902
Bismarck, ND 58502-0902
Telephone 701-255-0015

107.03 PATENTED DEVICES, MATERIALS, AND PROCESSES.

If any design, device, material, or process covered by letters of patent or copyright is used, their use shall be by legal agreement with the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the State, any affected third party, or political subdivision from all claims for infringement resulting from use of any patented design, device, material or process, or any trademark or copyright; and shall indemnify the State for any costs, expenses, and damages which it may be obliged to pay by reason of infringement during prosecution or after completion of the work.

107.04 HISTORIC PRESERVATION RESPONSIBILITIES.

- A. **Department Owned or Optioned Areas.** When the Contractor is operating within the right of way, easement areas, or within Department optioned areas and encounters the remains of prehistoric dwelling sites, human burials, or historical or archeological artifacts, operations at that location shall be temporarily discontinued. The Contractor shall inform the Engineer of the discovery and shall move his construction operations to another part of the project. If the Engineer determines that the Contractor cannot continue or operations cannot be moved, the Contractor may be paid standby costs as determined in 104.06 B.2.d.4. and, if necessary, will be allowed an extension of time. The Engineer will immediately notify

the State Historic Preservation Office (SHPO) and will make all reasonable efforts to protect the material until the matter has been reviewed by the SHPO. If cultural resources are discovered that are eligible for inclusion in the National Register of Historical Places, compliance with Section 106 of the National Historic Preservation Act of 1966 and the Advisory Council on Historic preservation "Procedures for the Protection of Historic and Cultural Properties" (36 CFR, Pt. 800) will be required. When directed, the Contractor shall excavate the site to preserve the artifacts encountered. Such excavation will be paid for as "Extra Work." If the Contractor fails to notify the Engineer of the discovery, the Contractor shall be liable for all standby costs, all damages incurred, and all costs associated with the salvage and preservation activities specified in this Section.

- B. Contractor-Located Areas.** At least 14 days before stripping topsoil or removing material from a Contractor-located aggregate source or borrow area, the Contractor shall furnish a legal description of the location of the pit or the areas to the Department. This requirement is also binding when the Contractor uses aggregate sources from Department-furnished clues.

The Department will investigate the location to determine if a potential for cultural resources in the area exists. If the Department determines that a moderate or higher potential does exist, the Contractor must obtain clearance from the SHPO before any pit operations can be initiated. To obtain SHPO clearance, a cultural resource survey must be conducted by a qualified archaeologist and the results submitted to the Department. The Contractor shall arrange and pay for this survey. The Contractor will not receive any payments or compensation for delays resulting from this required review.

This review, conducted by the Department, will not relieve the Contractor of the responsibility of complying with all federal and state laws and regulations which govern the salvage and preservation of any cultural resources that are discovered during pit or borrow operations. If the Contractor does encounter remains of prehistoric dwelling sites, human burials, or historical or archaeological artifacts at any stage of pit or borrow operations, the procedures specified in Section 107.04 A shall be followed, except that the Contractor shall be liable for all standby costs, all damages incurred, and all costs associated with the salvage and preservation activities.

If the proposed site is located on Indian trust (Allotted) lands, a permit must be obtained from the Bureau of Indian Affairs (BIA) before the cultural resource survey can be conducted. The Contractor must obtain written permission from the property owners and the tribe before the BIA will issue the permit. The Department will not be responsible for, nor participate in, costs that are incurred or claimed by the Contractor resulting from delays or other inconveniences encountered in obtaining the BIA permit.

107.05 RESPONSIBILITY TO THE PUBLIC.

A. Maintaining Traffic.

1. **General.** Construction work shall be conducted to minimize obstructions to traffic. The safety and convenience of the general public and residents along the highway and the protection of persons and property shall be provided for by the Contractor.

The roadway shall be kept open to all traffic during progress of the work. Where provided in Contract, traffic may be bypassed over an approved detour route. The portion of the roadway being used by public traffic shall be kept in a condition that safely and adequately accommodates traffic. The Contractor shall also provide and maintain in a safe condition temporary approaches or crossings and intersections with trails, roads, streets, businesses, parking lots, residences, garages, and farms. The cost of maintaining traffic over the section of road undergoing improvement shall be at the Contractor's expense. Snow removal will not be required of the Contractor to maintain public traffic.

The Contractor shall furnish, erect, and maintain all necessary barricades, warning signs, lights, and traffic control devices to protect the work and safety of the public and the workers.

All traffic control, pilot cars, and flagging shall meet Section 704 and the traffic control plans. The cost of maintaining and protecting traffic will be considered incidental to the price bid for other Contract items when no separate pay item for "Traffic Control" is provided.

The cost of flagging will be paid for as provided in Price Schedule PS-1 if there is no separate bid item for flagging.

Maintenance work required shall be provided until the Department accepts the Project under Section 105.13.

2. **Special Bypasses.** When the Proposal Form contains an item for "Maintenance of Temporary Bypasses" or "Temporary Bypasses", payment shall cover all costs associated with constructing, maintaining, and obliterating bypasses, including construction and removal of temporary bridges and accessory features. Right of Way for temporary bypasses or bridges designated in the Contract will be furnished by the Department.
3. **Maintenance of Traffic During Suspension of Work.** The Contractor shall make passable and shall open to traffic the portions of the Project and temporary roadways as agreed upon during anticipated periods of suspension. During this suspension period, the maintenance of the temporary route or line of travel agreed on will be the Department's obligation. When work is resumed the Contractor shall replace or restore any work or materials lost or damaged because of temporary use of the Project, shall remove any work or materials used for temporary maintenance, and shall complete the Project as though its prosecution had been continuous and without interference. The Engineer will determine to what extent the Contractor is obligated to restore the work after a period of suspension.

If construction operations are not resumed on or before the effective date of the Engineer's order to resume work, any costs incurred by the Department for traffic control after the effective date of the order will be deducted from future payments due the Contractor.

4. **Maintenance Directed by the Engineer.** If the Engineer directs special maintenance for the benefit of the traveling public, payment will be as provided in Section 104.03 D. The Engineer will determine the work to be classed as special maintenance.

5. **Parking of Equipment, Vehicles, and Stored Materials.** The parking of equipment, vehicles, and storing of materials in the median on divided roadways is not permitted. On all roadways, parking and storing of materials may be permitted only if equipment, vehicles, and material are located a minimum of 60 feet from the outside edge of the driving lane.
6. **Urban Work.** Where work is performed in a city, the Contractor shall give the Chief of the Fire Department and Chief of Police at least 24 hours written notice before blocking any street. Fire hydrants shall be accessible to the Fire Department at all times. No material or other obstruction shall be placed closer to a fire hydrant than permitted by ordinances, rules or regulations, or within 5 feet of a fire hydrant in the absence of any ordinances, rules, or regulations.

If dust from construction operations becomes a hazard to traffic or a nuisance to the public, a vacuum or pickup sweeper shall be available for controlling dust. Costs shall be incidental to other bid items.

B. Haul Roads.

1. **General.** The requirements for the use, maintenance, and restoration of roads and streets designated as haul roads to haul material to or from the Project shall be as specified in this Section.

All costs, excluding water for dust control, for the maintenance, repair, and restoration of roads and streets not designated as Haul Roads shall be the Contractor's responsibility.

Dust caused by construction or hauling operations on the highway or on designated or undesignated haul roads that creates a hazard to traffic or a nuisance to the public shall be sprinkled with water as necessary to control the dust. This water shall be considered part of the water provided in the Contract for mixing or compaction, and will be paid for as specified in the Contract covering the item of work. When a pay item is not provided in the the Contract, water will be paid for as specified in the Price Schedule PS-1 included in the Proposal Form.

2. **Designation of Haul Roads.** The Engineer shall be notified of each public road or street which is proposed for use as a haul road, before hauling over that route. If the Engineer determines that the road or street is the most practical route for transporting materials, the route will be designated as a "Haul Road."

A road or street which may be severely damaged by concentrated heavy hauling will not be designated as a Haul Road unless no alternate route is available. The Contractor shall investigate alternate routes before submitting a bid.

If the condition of a road or street is determined unsuitable for hauling, it will not be designated as a Haul Road unless improvements are made before hauling. If the Engineer determines that the pre-haul improvements will reduce haul road restoration costs, the material required to make these improvements will be measured and paid for by the Department.

A designated Haul Road route shall not be changed except by written permission from the Engineer. If the change is requested for the Contractor's convenience, the Engineer may require an agreement limiting the Department's cost liability for maintenance and restoration of the Haul Road.

3. **Pre-Haul Inspection.** Before hauling over a designated route, a joint inspection of the Haul Road will be made by the Engineer, the Contractor, and the Governmental Agency or Political Subdivision charged with control and maintenance of the route. The existing condition of the Haul Road, including the type, thickness, and width of surfacing material in place will be determined and recorded. The inspection report will set forth any special conditions for use, maintenance, and restoration of the route. The report shall be approved and signed by the Contractor, Governmental Agency or Political Subdivision, and Engineer.
4. **Materials.** Materials used for maintenance and restoration of Haul Roads shall meet the following requirements:

Granular material for Aggregate Base or Bituminous Mix shall be an approved aggregate being used on the Project, or may be any one of the following: Classes 4, 5, 8, 13, 25, 29, 30, or 33 as set forth in Section 816.

The type and amount of bitumen used in Bituminous Mix shall be determined by the Engineer, and the method of mixing shall be subject to approval by the Engineer. Bitumen shall meet Section 818 of the Standard Specifications.

Bitumen for Seal (or Prime) shall meet Section 818 of the Standard Specifications. The type of bitumen used and the rate of application shall be determined by the Engineer.

Seal aggregate shall be either Class 43 or 45, as determined by the Engineer to fit the needs of the specific haul road. The seal aggregate used shall meet Section 816 of the Standard Specifications for the specific Class.

Blotter Sand shall meet Class 44 of Section 816 of the Standard Specifications. The rate of application shall be determined by the Engineer.

5. **Use, Maintenance, and Restoration.** While hauling operations are in progress, the haul roads shall be maintained in a condition satisfactory to the Engineer. The Contractor shall comply with all legal load restrictions in hauling materials on public roads.

If the Contractor damages the road through negligence, hauls loads in excess of legal limits, or fails to perform maintenance, the road shall be repaired and restored by and at the Contractor's expense.

When hauling operations over a designated Haul Road are completed, the road shall be restored to a condition at least equal to that existing at the time hauling operations began. The kind and amount of restoration work required and procedures for performing this work will be determined by the Engineer.

The fact that other traffic has used the Haul Road concurrently does not relieve the Contractor's obligation to maintain and restore the road as provided.

If any other Contractor used the same route concurrently to haul materials for use on a Department contract, the Engineer will determine the amount of maintenance and restoration obligation to be shared by each.

Satisfactory restoration of Haul Roads under Department jurisdiction will be accepted by the Engineer in writing, relieving the Contractor of any further obligation in connection with restoration of the road. When restoration work on a Haul Road under other jurisdiction has been completed, the Contractor shall obtain a Haul Road release from the Governmental Agency or Political Subdivision charged with control and maintenance of the route, and a copy of the executed release shall be submitted to the Engineer.

6. **Method of Measurement.** All materials ordered by the Engineer for pre-haul improvements, maintenance, and restoration of Haul Roads will be measured as set forth in the applicable section of the Standard Specifications.
7. **Basis of Payment.** Payment for materials measured as specified will be paid for at the Contract Unit Price whenever the Contract provides a separate pay item for that material. If the Contract does not provide a separate pay item for a specific material, payment will be made according to the unit price listed in the "Price Schedule: PS-1" included in the Proposal Form.

Payment for items ordered by the Engineer that do not have a Contract Unit Price and are not listed in the Proposal Form as noted, will be paid for under Section 104.03 D.

Separate payment will not be made for costs of blading and reshaping necessary for maintenance and restoration of Haul Roads. This cost shall be included in the price bid for other Contract items.

- C. **Use of Explosives.** Explosives used in the prosecution of the work shall not endanger life or property, including new work. The Contractor shall be responsible for any and all damages resulting from use of explosives.

The Contractor shall comply with all local and state laws and ordinances, as well as with 27 CFR Part 55, and 29 CFR Part 1926, whichever is most restrictive, in the use, handling, loading, transportation, and storage of explosives and blasting agents.

Each public utility company having structures near the work site shall be notified of the intention to use explosives. Notice shall be given 24 hours in advance to enable the companies to protect their property from damage.

- D. **Protection and Restoration of the Property.** The Contractor shall preserve all public and private property and shall not move, disturb, or damage land monuments and property markers until the Engineer has witnessed or otherwise referenced their location.

The Contractor is responsible for damages or injury resulting from any act, omission, neglect, or misconduct in the manner of executing the work, or due to defective work or materials. This responsibility will not be released until the Project has been completed and accepted.

Any direct damage or injury that is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or

in consequence of the non-execution of the work shall be restored, by and at the Contractor's expense. The property shall be restored to a condition equal to that existing before such damage or injury occurred by repairing, rebuilding, or otherwise restoring, or making good the damage or injury in a manner acceptable to the Engineer, the controlling public agency, or private property owners.

- E. **Responsibility for Damage Claims.** The Contractor shall indemnify and hold harmless the Department, its officers and employees, counties, cities, or other entities or agencies responsible for project supervision, or having jurisdiction over the completed project, and their officers and employees, from suits, actions, or claims brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of said Contractor; or on account of or in consequence of neglect in safeguarding the work, or through use of unacceptable materials in constructing the work; or because of any act of omission, neglect or misconduct of the Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the Workmen's Compensation Act, or any other law, ordinance, order, or decree. Money due the Contractor under the Contract, may be retained for the use of the Department. In case no money is due, the Surety may be held until such suits, actions, or claims for injuries or damages are settled and evidence to that effect furnished to the Department. Money due the Contractor will not be withheld when evidence shows that the Contractor is adequately protected by public liability and property damage insurance.

It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of the Contract to create in the public or any member thereof a third-party beneficiary, or to authorize anyone to maintain any action for personal injuries, death, or property damage pursuant to or arising out of the terms or provisions of the Contract.

- F. **Personal Liability of Public Officials.**

There shall be no liability upon the Director, Engineer, or their authorized representatives, either personally or as officials of the State in carrying out any Contract provisions, or in exercising any power or authority granted to them by or within the Contract's scope. It should be understood that in all such matters they act solely as agents and representatives of the State.

107.06 RAILWAY HIGHWAY PROVISIONS.

- A. **Indemnification.** The Contractor agrees to indemnify and save harmless the Railway, from and against all lawful claims, demands, judgements, losses, costs and expenses, for injury to or death of the person or loss or damage to the property of any person or persons whomever, including the parties hereto, in any manner arising from or growing out of the acts of omissions, negligence or otherwise of the Contractor, its successors, assigns, licensees and invitees or agents, in connection with the entry upon, occupation or use of the said premises herein described, including but not limited to that of the location, construction, operation, restoration, repair, renewal, or maintenance of said roadway and storm drainage improvements upon the herein described premises or otherwise.
- B. **Railway Protection.** If the Contract requires that materials be hauled across railroad tracks, other than existing public crossings, the Department will make ar-

rangements with the railroad for the crossings required. If crossings other than those specified are used, the Contractor shall make arrangements to use the crossings.

All work involving occupation of any track or tracks, encroachment on train clearance requirements, or any other interference with the safe use of tracks shall be performed at such times and in such a manner as not to impede train or switching movements, and shall be subject to time schedules set by the Railroad Company. The Contractor shall notify the Department and Railroad Company at least 10 days before the date on which they propose to start work within the Railroad's Right of Way; and in addition shall notify the Department and Railroad Company at least 24 hours in advance of the time they propose to do any work which may interfere with operation of trains.

The Department and the Railroad Company shall be furnished detailed plans of all false-work, excavation, and cofferdams to be constructed over, below, or adjacent to the Railroad's tracks. No work on these items shall be done until the detailed plans have been approved by the Railroad Company.

The Contractor shall coordinate the need for railroad flagging with the affected railroad, and provide the railroad 48 hours advance notice before flagging operations are needed. If flagging of railroad traffic is required, the Department will reimburse the Railroad Company for the costs incurred.

C. **Railway Protection Insurance.**

1. **General Liability.** The Contractor shall assume all liability and provide primary limited coverage as follows:
 - a. Liability insurance coverage shall be limited to damage suffered by the Railroad because of occurrences arising out of the Contractor's work on or about the Railroad Right of Way, independent of the Railroad's general supervision or control, except as noted in Section (b) 4.
 - b. Coverage shall include:
 - (1) Death of or bodily injury to passengers of the Railway and employees of the Railroad not covered by the State Worker's Compensation laws;
 - (2) Personal property owned by, or in the custody or control of, the Railroads;
 - (3) The Contractor or any of their agents or employees who suffer bodily injury or death as the result of acts of the Railroad or its agents, regardless of the Railroad's negligence;
 - (4) Negligence of only the following classes of Railroad employees:
 - (a) Any supervisory employee of the Railroad at the job site;
 - (b) Any employee of the Railroad while operating, attached to, or engaged on work trains or other Railroad equipment at the job site which are assigned exclusively to the Contractor; or

- (c) Any employee of the Railroad not within (a) or (b) who is specifically loaned or assigned to the Contractor's work for prevention of accidents or protection of property, where the cost of these services is paid by the Contractor or the Department.

- 2. **Policy.** The policy shall provide Railroad Protective Liability Insurance for a combined single limit of not less than \$2,000,000 for all damages arising out of bodily injuries to, or death of, any person or persons, and for all damages arising out of loss or destruction of, or injury or damage to, property in any one occurrence during the policy period, and subject to that limitation a combined total (or aggregate) limit of \$6,000,000 for all damages arising out of bodily injuries to, or death of any person or persons, and for all damages arising out of loss or destruction of, or injury or damages to property during the policy period.

D. **Railway Public Liability Insurance.**

The Contractor, for work on the Railway right-of-way, will protect and hold harmless the Railway and any other railroad company occupying or using the Railway's right-of-way or line of railroad against all loss, liability, and damage arising from activities of the Contractor, its forces or any of its subcontractors or agents, and will further provide the following insurance coverages:

- 1. Commercial General Liability Insurance to include contractual liability and products completed operations, against claims arising out of bodily injury, illness and death and from damage to or destruction of property of others, including loss of use thereof, and including liability of the Railway, with minimum limits for bodily injury and property damage of \$2,000,000 for each occurrence with an aggregate of \$4,000,000. This policy shall contain a "Waiver of Transfer Rights" endorsement to waive any right of recovery that the insurance company may have against the Railway because of payment made for bodily injuries or property damage.
- 2. Business Automobile Policy Insurance, including owned, non-owned, and hired vehicles with minimum limits for bodily injury and property damage of \$1,000,000 per occurrence on all vehicles used while performing any work pursuant to this agreement.
- 3. Worker's Compensation Insurance as required under the Worker's Compensation Act of North Dakota. If the Contractor is not covered by the North Dakota Worker's Compensation Act, the Contractor shall provide an employer's liability policy. The policy shall include occupational disease to required statutory limits, employer's liability of \$1,000,000 to include FELA (Federal Employees Liability Act), if appropriate, and an "All States" endorsement.

E. **General Insurance Requirements.**

- 1. At least 10 days before any work is done on the Railway Right of Way, the Contractor shall procure and furnish to the Department's Construction Engineer (Construction Division, North Dakota Department of Transportation, 608 East Boulevard, Bismarck, ND 58505-0700), the insurance policy or a certified copy of the Railway Protection Insurance Policy. The Contractor shall also procure and furnish a certificate of insurance for the Railway Public

Liability Insurance Policies to the Department's Construction Engineer. The Construction Engineer will forward the policies to the Railway Company.

2. The insurance policies shall be executed by a corporation qualified and authorized to write the policies in the State of North Dakota. The policies shall be in a form and substance satisfactory to the Railroad.
3. The insurance shall be in full force and effect before any work is done on the Railway Right of Way and shall remain in full force and effect and not be cancelled by the Contractor until all work required to be done on the Railway Right of Way has been completed, as evidenced by acceptance of the portion of the work by the Department.

F. **Basis of Payment.** Payment for Railway Insurance will be by the Lump Sum unit price bid. Payment shall be for the cost of providing Railway Protective Liability Insurance and the Railway Public Liability Insurance as specified. Payment of the Lump Sum will be made upon approval of the policies by the Railway.

107.07 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE.

A. **Insurance Requirements.** Contractor shall secure and keep in force during the term of the contract the following insurance coverages:

1. Commercial General Liability for limits not less than one million dollars (\$1,000,000) combined single limit per occurrence and aggregate for bodily injury, property damage, personal injury and completed operations/product liability. Products and completed operations coverage shall be provided for a period of one year following final acceptance of the work. The aggregate limit shall apply separately to occurrences at the location or project to which this contract relates. The policy shall include a "stop-gap" Employers Liability endorsement to cover the employer's liability for injury to employees which fall outside the State's Worker's Compensation Law.
2. Commercial Automobile Liability for limits not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
3. Workers Compensation coverage as required by the State of North Dakota.

The General Liability and Automobile policies shall provide an additional insured endorsement in favor of the State of North Dakota and the Owner and shall contain a "Waiver of Subrogation" to waive any right of recovery that the Insurance company may have against the State and the Owner. The coverage required under this agreement shall be primary for the State and the Owner, and shall not be affected by any other insurance or coverage obtained by the State or the Owner on their own behalf.

Any right of the State to receive indemnification and insurance shall not give rise to a duty on the part of the State to exercise its rights or status for the benefit of the Owner, or any other person or entity.

B. **General Requirements.**

1. The successful bidder shall submit the Certificates of Insurance effecting the foregoing requirements for the General and Automobile Liability Insurance

with the Contract and the Contract Bond within 10 calendar days after the date of notice of Contract Award.

2. The insurance policies shall be executed by a corporation qualified and authorized to write the policies in the State of North Dakota. The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.
3. The insurance shall be in full force and effect before any work is done on the Project and shall remain in full force and effect and not be cancelled by the Contractor until all work has been completed and accepted by the Department or the Owner. All policies shall provide thirty days notice to the Department or the Owner of any intent to cancel or materially alter such insurance.
4. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract upon which the Department or the Owner may, after giving five working days notice to the Contractor to correct the breach, immediately terminate the Contractor, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Department or the Owner on demand, or at the sole discretion of the Department or the Owner, offset against funds due the Contractor from the Department or the Owner.

- C. **Subcontractor.** When a portion of a Contract is sublet, the Contractor shall obtain insurance protection (as outlined in Part A) to provide liability coverage to protect the Contractor, State, and Owner as a result of work undertaken by the Subcontractor. In addition, the Contractor shall ensure that any and all parties performing work under the Contract are covered by public liability and property damage insurance as outlined in Part A.

107.08 HAZARDOUS MATERIAL.

If any abnormal condition is encountered or exposed which indicates the presence of a hazardous material or toxic waste, construction operations shall immediately be suspended in the area and the Engineer notified. The construction operations in this area shall not resume, and work shall be continued in other areas of the Project, unless otherwise directed by the Engineer.

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

Disposition of the hazardous material or toxic waste shall be made in accordance with the requirements and regulations of the North Dakota Health Department. Work required to dispose of these materials will be paid for according to Section 104.03 D. Should waste material disposal require special procedures, the Department will make arrangements with qualified, certified persons to dispose of the material.

107.09 CIVIL RIGHTS.

The Contractor shall comply with federal, state, and local laws, rules, and regulations which set forth unlawful employment practices including that of discrimination be-

cause of race, religion, color, sex, or national origin, and which define actions required for Affirmative Action and Disadvantaged Business Enterprise (DBE) programs.

107.10 INERT WASTE DISPOSAL.

This work consists of the proper disposal of inert material waste on a project. Inert waste includes, but not limited too; Concrete, Steel, and Bituminous Pavements and Base.

For additional information reference the North Dakota Department of Health–Division of Waste Management’s “GUIDELINE 22A–INERT WASTE DISPOSAL VARIANCE.”

When inert material on a project is designated the property of the contractor, and the contractor chooses to waste the material, the material must be disposed in one of two ways:

- A. Disposal of the material at an approved permanent waste management facility.
- B. Waste may be disposed of without the use of a permanent waste management facility if an “INERT WASTE DISPOSAL VARIANCE APPLICATION,” SFN 50278, is filed with, and approved by the North Dakota Department of Health–Division of Waste Management. For guidance in the filing of the application refer to the North Dakota Department of Health–Division of Waste Management’s “GUIDELINE 22A–INERT WASTE DISPOSAL VARIANCE.” Upon approval of the variance, the contractor shall furnish the engineer with an approved copy before any material is disposed at the approved site.

Locations of permanent waste facilities, and a variance application and guideline can be obtained at the North Dakota Department of Health–Division of Waste Management, 701-328-5166.

SECTION 108 PROSECUTION AND PROGRESS

108.01 PROSECUTION AND PROGRESS.

- A. **Preconstruction Conference.** A preconstruction conference, unless waived by the Engineer, will be held for each Contract at a time and place mutually established by the Contractor and Engineer before any Contract work begins. The Contractor shall notify the appropriate subcontractors, utility companies, and other interested parties of the time and place of the conference.
- B. **Progress Schedule.** The progress schedule shall be submitted to the Department. This schedule shall establish critical construction operations and will be used to check on work progress. The Contractor shall provide sufficient materials, equip-