

to all subcontractors, as defined in the Code, within 7 days after receipt of payment from the Department; or, shall notify the Department and subcontractor in writing of the intention to withhold all or a part of the amount due along with the reason for nonpayment.

In the event payment is not made as noted, the Contractor shall pay interest at the rate of 1 percent per month, unless otherwise provided in the contract, to the subcontractor on all amounts that remain unpaid after 7 days except for the amounts withheld as provided hereinbefore.

These same requirements shall be included in each subcontract and shall be applicable to each lower-tier subcontractor.

107.02—Permits, Certificates, and Licenses.

Permits and certificates obtained by the Department will be included in the contract documents. Construction methods shall conform to the stipulations of the permit. The Contractor shall assume all obligations and cost he incurs by complying with the terms and conditions of the permits and certificates.

If a U.S. Army Corps of Engineers permit is not applicable and additional permits or certificates are required to perform dredging for flotation of construction equipment or for other temporary work as indicated in the Contractor's accepted plan of operations but have not been obtained by the Department, the Contractor shall furnish the Engineer, at least 75 days prior to the proposed activity, all necessary information pertaining to the proposed activity in order for the Department to make application for the permit(s) or certificate(s). The Contractor shall not begin the proposed activity until the additional permit(s) or certificate(s) has been secured and the Contractor has been advised by the Engineer that the proposed activity may proceed. Additional compensation will not be made for delay(s) to the work or for change(s) in the Contractor's proposed methods that may result from the jurisdictional agencies' review process or disapproval of the Contractor's proposed methods except that an extension of time will be considered in accordance with the requirements of Section 108.09 if a permit or permit denial is not issued within the specified 75 days.

- (a) **U.S. Army Corps of Engineers Permit:** If a U.S. Army Corps of Engineers permit is applicable to the project, the proposal will so indicate and the Department will obtain it. If the permit obtained does not cover construction activities that require a permit and the Department determines that the activities are necessary for completion of the work, the Contractor shall furnish the Engineer all necessary information pertaining to the activity so that the Department can apply for an addendum to the permit. Such information shall be furnished at least 180 days prior to the date the activity is to begin. The Contractor shall not begin the activity until directed to do so by the Engineer. Additional compensation will not be made for delay(s) to the work or change(s) in the Contractor's proposed

methods of construction that may result from the jurisdictional agencies' review process or disapproval of the Contractor's proposed methods. However, an extension of time will be considered in accordance with the requirements of Section 108.09 if notification to proceed or denial of the proposed construction activity is not issued within 180 days.

The Contractor shall not proceed with work covered by the permit until the work is released in writing by the Engineer. The Engineer may release a portion or all of such work but may order a suspension of the same work after its release.

If the Department has not released work covered by the Corps of Engineers permit and the Contractor has completed all other work within the limits of the project, the Contractor shall so advise the Engineer in writing. Upon receipt of the notification, the Engineer will evaluate the status of the project and advise the Contractor within 45 days of the portion of the project that is acceptable under Section 105.15. If the Engineer determines that all of the work except that encumbered by the permit application is acceptable under Section 105.15, the Contractor will be notified accordingly. The Department or Contractor may then elect to continue or terminate the remaining portion of the Contract.

The party electing to terminate the Contract shall so advise the other party in writing after the 45-day period. The terms of contract termination will be in accordance with the requirements of Section 108.14. No compensation will be made for delays encountered or for work not performed except for an extension of time as determined in accordance with the requirements of Section 108.09.

If the Contractor elects to maintain contractual obligations with the approval of the Engineer, he shall continue maintenance of uncompleted work and disturbed areas. Upon release by the Department in writing, the Contractor shall complete the remaining work in accordance with the contract requirements.

- (b) **Nationwide Federal Permit:** If a Nationwide Federal Permit is applicable to the project, the proposal will so indicate and a Corps of Engineers permit will not be required. However, the Department may have obtained other permits or certificates for the project.
- (c) **Other Permits, Certificates, and Licenses:** Except as otherwise specified herein, the Contractor shall procure necessary permits, certificates, or licenses that have not been obtained by the Department. The Contractor shall pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of the work.

107.03—Patented Devices, Materials, and Processes.

If the Contractor employs any design, device, material, or process covered by a patent or copyright, he shall provide for its use by obtaining a 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 claims for infringement because of such use. The Contractor shall indemnify the State for costs, expenses, or damages resulting from infringement during prosecution or after completion of the work.

107.04—Restoration of Work Performed by Others.

The Department may construct or reconstruct any utility service in the highway or street or grant a permit for the same at any time. The Contractor shall not be entitled to any damages occasioned thereby other than a consideration of an extension of time.

When authorized by the Engineer, the Contractor shall allow any person, firm, or corporation to make an opening in the highway within the limits of the project upon presentation of a duly executed permit from the Department or any municipality for sections within its corporate limits. When directed by the Engineer, the Contractor shall satisfactorily repair portions of the work disturbed by the openings. The necessary work will be paid for as extra work in accordance with the requirements of these specifications and shall be subject to the same conditions as the original work performed.

107.05—Federal-Aid Provisions.

When the U.S. government pays all or any portion of the cost of a project, the Contractor shall observe the federal laws and rules and regulations made pursuant to such laws. The work shall be subject to inspection by the appropriate federal agency. Such inspection shall in no sense make the federal government a party of the Contract and will in no way interfere with the rights of either party.

107.06—Sanitary Provisions.

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

107.07—Public Convenience and Safety.

The Contractor shall conduct his work so as to ensure the least possible obstruction to traffic. The Contractor shall provide for the safety and convenience of the general public and residents along the highway and the protection of persons and property as specified in Section 104.04.

107.08—Railway-Highway Provisions.

If the Contractor's work requires hauling materials across the tracks of a railway, he shall make arrangements with the railway for any new crossing(s) required or the use of any existing crossing. Charges made by the railway company for the construction or use of new or existing crossings and their subsequent removal and for watchperson or flagger service at such crossings shall be reimbursed by the Contractor directly to the railway company under the terms of their own arrangements before final acceptance.

Work to be performed by the Contractor in construction on or over the railway right of way shall be performed at times and in a manner that will not interfere unnecessarily with the movement of trains or traffic on the railway track. The Contractor shall use care to avoid accidents, damage, or unnecessary delay or interference with the railway company's trains or other property. If any interruption of railway traffic is required by the Contractor's actions, he shall obtain prior written approval from the railway company.

The Contractor shall conduct operations that occur on or over the right of way of any railway company fully within the rules, regulations, and requirements of the railway company and in accordance with the requirements of any agreements made between the Department and railway company that are made a part of the Contract.

- (a) **Flagger or Watchperson Services:** Flagger or watchperson services required by the railway company for the safety of railroad operations because of work being performed by the Contractor or incidental thereto will be provided by the railway company. The cost for such services as required for work shown on the plans will be borne by the Department. Any cost of such services resulting from work not shown on the plans or for the Contractor's convenience shall be borne by the Contractor and shall be paid directly to the railway company(s) under the terms of their own agreement.

No work shall be undertaken on or over the railway right of way until the watchpersons or flaggers are present at the project site. The Contractor shall continuously prosecute the affected work to completion to minimize the need for flagger or watchperson services. Costs for such services that the Engineer determines to be unnecessary because of the Contractor's failure to give notice as required herein before initially starting, intermittently continuing, or discontinuing work on or over the railway right of way shall be borne by the Contractor and will be deducted from monies due him.

- (b) **Approval of Construction Methods on Railway Right of Way:** The Contractor shall submit to the Department a plan of operations showing the design and method of proposed structural operations and shall obtain its approval before performing any work on the railway company's right of way unless otherwise indicated in the railroad agreement. The plan

shall be clear and legible, and details shall be drawn to scale. The plan shall show, but not be limited to, the following:

1. proximity of construction operations to tracks
2. depth of excavation with respect to tracks
3. description of structural units
4. vertical and horizontal clearances to be afforded the railroad during installation and upon completion of excavation
5. sheeting and bracing
6. method and sequence of operations

Approval shall not relieve the Contractor of any liability under the Contract. The Contractor shall arrange the work so as not to interfere with the railway company's operation except by agreement with the railway company.

- (c) **Insurance:** In addition to insurance or bonds required under the terms of the Contract, the Contractor shall carry insurance covering operations affecting the property of the railway company. The original railroad protective liability insurance policy and certificate of insurance showing insurance carried by the Contractor and any subcontractors shall be submitted to the railway company for approval and retention.

Neither the Contractor nor any subcontractor shall begin any work affecting the railway company until the railway company has received the insurance.

Notice of any material change in or cancellation of the required policies shall be furnished the Department and the railway company at least 30 days prior to the effective date of the change or cancellation. The insurance shall be of the following kinds and amounts:

1. **Contractor's public liability and property damage insurance:** The Contractor shall furnish evidence to the Department with respect to the operations to be performed that he carries regular contractor's public liability insurance. The insurance shall provide for a limit of at least the dollar value specified in the Contract for all damages arising out of bodily injuries to or the death of one person, and subject to that limit for each person, a total limit of at least the dollar value specified in the Contract for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence, and regular contractor's property damage insurance providing for a limit of at least the dollar value specified in the Contract for all damages arising out of bodily injury to or destruction of property in any one occurrence, and subject to that limit per occurrence, a total or aggregate limit of at least the dollar

value specified in the Contract for all damages arising out of injury to or destruction of property during the policy period. The Contractor's public liability and property damage insurance shall include explosion, collapse, and underground damage coverage. If the Contractor subcontracts any portion of the work, he shall secure insurance protection in his own behalf under the Contract's public liability and property damage insurance policies to cover any liability imposed on him by law for damages because of bodily injury to, or death of persons and injury to, or destruction of property as a result of work undertaken by the subcontractors. In addition, the Contractor shall provide similar insurance protection for and on behalf of any subcontractors to cover their operation by means of separate and individual contractor's public liability and property damage policies. As an alternative, he shall require each subcontractor to provide such insurance in his own behalf.

2. **Railroad protective insurance and public liability and property damage:** The policy furnished the railway company shall include coverage for contamination, pollution, explosion, collapse, and underground damage. The policy shall be of the type specified hereinafter and shall be expressed in standard language that may not be amended. No part may be omitted except as indicated hereinafter or by an endorsement that states an amendment or exclusion of some provision of the form in accordance with the provisions of a manual rule. The form of the endorsement shall be approved as may be required by the supervising authority of the state in which the policy is issued. A facsimile of the Declarations form as shown in the proposal shall be made a part of the policy and shall be executed by an officer of the insurance company. The several parts of the requirements and stipulations specified or inferred herein may appear in the policy in such sequence as the company may elect.

a. **For a policy issued by one company:**

(NAME AND LOCATION OF INDEMNITY COMPANY), a
 _____ Insurance Company, herein called
 (Type of Company)

the Company, agrees with the insured named in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Declarations made by the named insured and subject to all of the terms of his policy.

For a policy issued by two companies:

(NAME AND LOCATION OF INDEMNITY COMPANY)
 and

(NAME AND LOCATION OF INDEMNITY COMPANY),
 each a _____ Insurance Company, herein
 (Type of Company)

called the Company, severally agree with the insured named in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Declaration made by the named insured and subject to all of the terms of this policy, provided the named Indemnity Company shall be the insured with respect to Coverage _____ and no other and the named Insurance Company shall be the insurer with respect to Coverage _____ and no other.

b. Insuring agreements:

- (1) **Coverages: Coverage A—Bodily injury liability:** To pay on behalf of the insured all sums that the insured shall become legally obligated to pay as damages because of bodily injury, sickness, or disease including death at any time resulting therefrom (hereinafter called bodily injury) either (1) sustained by any person arising out of acts or omissions at the designated job site that are related to or are in connection with the work described in Item 6 of the Declarations; or (2) sustained at the designated job site by the Contractor, any employee of the Contractor, any employee of the governmental authority specified in Item 5 of the Declarations, or any designated employee of the insured, whether or not arising out of such acts or omissions.

Coverage B—Property damage liability: To pay on behalf of the insured all sums the insured shall become legally obligated to pay as damages because of physical injury to or destruction of property, including loss of use of any property because of such injury or destruction (hereinafter called property damage) arising out of acts or omissions at the designated job site that are related to or are in connection with the work described in Item 6 of the Declarations.

Coverage C—Physical damage to property: To pay for direct and accidental loss of or damage to rolling stock and other contents, mechanical construction equipment, or motive power equipment (hereinafter called loss) arising out of acts or omissions at the designated job site that are related to or are in connection with the work described in Item 6 of the Declarations; provided such property is owned by the named insured or is leased or entrusted to the named insured under a lease or trust agreement.

- (2) **Definitions:** *Insured* includes the named insured and any executive officer, director, or stockholder thereof while acting within the scope of his duties as such.

Contractor means the Contractor designated in Item 4 of the Declarations and includes all subcontractors of the Contractor but not the named insured.

Designated employee of the insured means (1) any supervisory employee of the insured at the job site; (2) any employee of the insured while operating, attached to, or engaged on work trains or other railroad equipment at the job site that is assigned exclusively to the Contractor; or (3) any employee of the insured not within (1) or (2) who is specifically loaned or assigned to the work of the Contractor for prevention of accidents or protection of property, the cost of whose services is borne specifically by the Contractor or governmental authority.

Contract means any contract or agreement to carry a person or property for a consideration or any lease, trust, or interchange contract or agreement respecting motive power, rolling stock, or mechanical construction equipment.

- (3) **Defense and settlement supplementary payments:** With respect to such insurance as is afforded by this policy under Coverages A and B, the Company shall defend any suit against the insured alleging such bodily injury or property damage and seeking damages that are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false, or fraudulent. However, the Company may make such investigation and settlement of any claim or suit as it deems expedient.

In addition to the applicable limits of liability, the Company shall pay (1) all expenses incurred by the company, all costs taxed against the insured in any such suit, and all interest on the entire amount of any judgment therein that accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment that does not exceed the limit of the Company's liability thereon; (2) premiums on appeal bonds required in any such suit and premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, but without obligation to apply for or furnish any such bonds; (3) expenses incurred by the insured for first aid to others that shall be imperative at the time of the occurrence; and (4) all reasonable

expenses, other than loss of earnings, incurred by the insured at the Company's request.

- (4) **Policy period and territory:** This policy applies only to occurrences and losses during the policy period and within the United States, its territories or possessions, or Canada.
- c. **Exclusions:** This policy does not apply to the following:
- (1) liability assumed by the insured under any contract or agreement except a contract as defined herein
 - (2) bodily injury or property damage caused intentionally by or at the direction of the insured
 - (3) bodily injury, property damage, or loss that occurs after notification to the named insured of the acceptance of the work by the governmental authority, other than bodily injury, property damage, or loss resulting from the existence or removal of tools, uninstalled equipment, and abandoned or unused materials
 - (4) under Coverage A(1), B, and C, to bodily injury, property damage, or loss, the sole proximate cause of which is an act or omission of any insured
 - (5) under Coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workers' compensation, employment compensation, or disability benefits law or under any similar law; provided that the Federal Employer's Liability Act, *U.S. Code* (1946) Title 45, Sections 51–60, as amended, shall for the purpose of this insurance be deemed not to be any similar law
 - (6) under Coverage B, to injury to or destruction of property owned by the named insured or leased or entrusted to the named insured under a lease or trust agreement
 - (7) under any liability coverage, to injury, sickness, disease, death, or destruction (1) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or (2) resulting from the hazardous properties of

nuclear material and with respect to which any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof or the insured is (or had this policy not been issued would be) entitled to indemnity from the United States or any agency thereof under any agreement entered into by the United States, or any agency thereof, with any person or organization

- (8) under any Medical Payments Coverage or any Supplementary Payments provision relating to immediate medical or surgical relief or to expenses incurred with respect to bodily injury, sickness, disease, or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization
- (9) under any liability coverage, to injury, sickness, disease, death, or destruction resulting from the hazardous properties of nuclear material if (1) the nuclear material is at any nuclear facility owned or operated by or on behalf of an insured or has been discharged or dispersed therefrom; (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or (3) the injury, sickness, disease, death, or destruction arises out of the furnishing by an insured of services, materials, or parts for equipment in connection with the planning, construction, maintenance, operation, or use of any nuclear facility; if such facility is located in the United States, its territories or possessions, or Canada, this exclusion applies only to injury to or destruction of property at such nuclear facility
- (10) under Coverage C, to loss attributable to nuclear reaction, nuclear radiation, or radioactive contamination or to any act or condition incident to any of the foregoing

As used in exclusions (7), (8), and (9), the following definitions apply: *Hazardous properties* include radioactive, toxic, or explosive properties. *Nuclear material* means source material, special nuclear material, or byproduct material. *Source material, special nuclear material, and byproduct material* have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof. *Spent fuel* means any fuel element or fuel component (solid or liquid) that has been used or exposed to radiation in a nuclear reaction. *Disposable material* means material containing byproduct material and resulting

from the operation by any person or organization of any nuclear facility included in the definition of nuclear facility under 1 or 2 below. *Nuclear facility* means

- (1) any nuclear reactor
- (2) any equipment or device designed or used for separating the isotopes of uranium or plutonium; processing or utilizing spent fuel; or handling, processing, or packaging waste
- (3) any equipment or device designed or used for the processing, fabricating, or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 (or any combination thereof) or more than 250 grams of uranium 235
- (4) any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of waste (includes the site on which any of the foregoing is located, all operation conducted on such site, and all premises used for such operations)

Nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, *injury* or *destruction* includes all forms of radioactive contamination of property.

- d. **Conditions:** The following conditions, except conditions (3) through (12), apply to all coverages. Conditions (3) through (12) apply only to the coverage noted thereunder.

- (1) **Premium:** The premium bases and rates for the hazards described in the Declarations are stated therein. Premium bases and rates for hazards not so described are those applicable in accordance with the requirements of the manuals used by the company. The term *contract cost* means the total cost of all work described in Item 6 of the Declaration. The term *rental cost* means the total cost to the Contractor for rental or work trains or other railroad equipment, including the remuneration of all employees of the insured while operating, attached to, or engaged thereon. The advance premium stated in the Declarations is an estimated premium only. Upon termination of this policy, the earned premium shall be computed in accor-

dance with the Company's rules, rates, rating plans, premiums, and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the Company shall look to the Contractor specified in the Declarations for any such excess. If less, the Company shall return to the Contractor the unearned portion paid. In no event shall payment or premium be an obligation of the named insured.

- (2) **Inspection:** The named insured shall make available to the Company records of information relating to the subject matter of this insurance. The Company shall be permitted to inspect all operations in connection with the work described in Item 6 of the Declarations.
- (3) **Limits of liability, Coverage A:** The limit of bodily injury liability stated in the Declarations as applicable to "each person" is the limit of the Company's liability for all damages (including damages for care and loss of services) arising out of bodily injury sustained by one person as the result of any one occurrence. The limit of such liability stated in the Declarations as applicable to "each occurrence" is (subject to the provision respecting each person) the total limit of the Company's liability for all such damage arising out of bodily injury sustained by two or more persons as the result of any one occurrence.
- (4) **Limits of liability, Coverages B and C:** The limit of liability under Coverages B and C stated in the Declarations as applicable to "each occurrence" is the total limit of the Company's liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction of, or loss of all property of one or more persons or organizations, including the loss or use of any property attributable to such injury or destruction under Coverage B, as the result of any one occurrence. Subject to the provision respecting "each occurrence", the limit of liability under Coverages B and C stated in the declaration as "aggregate" is the total limit of the Company's liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction of, or loss of property, including the loss or use of any property attributable to such injury or destruction under Coverage B.

Under Coverage C, the limit of the Company's liability for loss shall not exceed the actual cash value of the property, or if the loss is a part thereof, the actual cash

value of such part, at time of loss, nor what it would then cost to repair or replace the property of such part thereof with other of like kind and quality.

- (5) **Severability of interests, Coverages A and B:** The term *the insured* is used severally and not collectively. However, inclusion herein of more than one insured shall not operate to increase the limits of the Company's liability.
- (6) **Notice:** In the event of an occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the injured and of able witnesses shall be given by or for the insured to the company or any of its authorized agents as soon as is practicable. If a claim is made or a suit is brought against the insured, he shall immediately forward to the Company every demand, notice, summons, or other process received by him or his representative.
- (7) **Assistance and cooperation of the insured, Coverages A and B:** The insured shall cooperate with the Company and upon the Company's request attend hearings and trials and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses, and conducting suits. Except at his own cost, the insured shall not voluntarily make any payment, assume any obligations, or incur any expense other than for first aid to others that shall be imperative at the time of an accident.
- (8) **Action against Company, Coverages A and B:** No action shall lie against the Company unless as a condition precedent thereto the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant, and the Company. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a part to any action against the insured to determine the insured's liability. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

- (9) **Action against Company, Coverage C:** No action shall lie against the Company unless as a condition precedent thereto there shall have been full compliance with all the terms of this policy nor until 30 days after proof of loss is filed and the amount of loss is determined as provided in this policy.
- (10) **Insured's duties in event of loss, Coverage C:** In the event of loss, the insured shall protect the property, whether or not the loss is covered by this policy. Any further loss attributable to the insured's failure to protect shall not be recoverable under this policy. Reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request.

The insured shall also file with the Company, as soon as practicable after loss, his sworn proof of loss in such form and including such information as the Company may reasonably require and shall, upon the Company's request, exhibit the damaged property.

- (11) **Appraisal, Coverage C:** If the insured and the Company fail to agree as to the amount of loss, either may demand an appraisal of the loss within 60 days after the proof of loss is filed. In such event the insured and the Company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. An award in writing or any two shall determine the amount of loss. The insured and the Company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The Company shall not be held to have waived any of its rights by any act relating to appraisal.
- (12) **Payment of loss, Coverage C:** The Company may pay for the loss in money, but there shall be no abandonment of the damaged property to the Company.
- (13) **No benefit to bailee coverage:** The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or bailee (other than the named insured) liable for loss to the property.
- (14) **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all of the insured's rights of recovery therefor against any person or organization. The insured shall execute and deliver instruments and papers and do whatever else is necessary

to secure such rights. The insured shall do nothing after loss to prejudice such rights.

- (15) **Application of insurance:** The insurance afforded by this policy is primary insurance. If the insured has other primary insurance against a loss covered by this policy, the Company shall not be liable under the policy for a greater proportion of such loss than the applicable limit of liability stated in the Contract bears to the total applicable limit of all valid and equitable insurance against such loss.
- (16) **3-year policy:** A policy period of 3 years is comprised of three consecutive annual periods. Computation and adjustment of earned premium shall be made at the end of each annual period. Aggregate limits of liability as stated in this policy shall apply separately to each annual period.
- (17) **Changes:** Notice to any agent of knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms except by endorsement issued to form a part of this policy signed by *_____ provided, however, changes may be made in the written portion of the declaration by *_____ when initialed by such *_____ or by endorsement issued to form a part of this policy signed by such *_____.
[*Insert titles of authorized company representatives.]
- (18) **Assignment:** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon.
- (19) **Cancellation:** This policy may be cancelled by the named insured by mailing to the Company written notice stating when the cancellation shall become effective. This policy may be cancelled by the Company by mailing to the named insured, Contractor, and governmental authority at the respective addresses shown in this policy written notice stating when such cancellation shall be effective (not less than 30 days thereafter). The mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or the Company shall be equivalent to mailing. If the named insured cancels, the

earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, the earned premium shall be computed pro rata. The premium may be adjusted either at the time cancellation is effected or as soon as practicable after the cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

(20) **Declarations:** By acceptance of this policy, the named insured agrees that such statements in the Declarations as are made by him are his agreements and representations, that his policy is issued in reliance on the truth of such representations, and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

e. **For a policy issued by one company:**

In witness whereof, the _____ Indemnity Company has caused this policy to be signed by its president and a secretary at _____ and countersigned on the Declarations page by a duly authorized agent of the Company.

(Facsimile of Signature)
Secretary

(Facsimile of Signature)
President

For a policy issued by two companies:

In witness whereof, the _____ Indemnity Company has caused this policy with respect to Coverages _____ and such other parts of the policy as are applicable thereto to be signed by its president and a secretary at _____ and countersigned on the Declarations page by a duly authorized agent of the Company.

(Facsimile of Signature)
Secretary

(Facsimile of Signature)
President

(d) **Submitting Copies of Insurance Policies:** Prior to beginning construction operations on or over the railway right of way, the Contractor shall submit to the Department evidence of the railway company's approval and a copy of the required insurance policies. The State will not be responsible for any claims from the Contractor resulting from delay in the acceptance of any of these policies by the railway company other than consideration of an extension of time. If the delay is caused by the failure of the Contractor or his insurer to file the required insurance policies promptly, an extension of time will not be granted.

- (e) **Beginning Construction:** Preliminary contingent work or other work by the railway company may delay the starting or continuous prosecution of the work by the Contractor. The Contractor shall be satisfied as to the probable extent of such work and its effect on the operations prior to submitting a proposal. The State will not be responsible for any claims by the Contractor resulting from such delays except that an extension of time may be considered.
- (f) **Arranging for Tests:**
1. **Railroad specifications:** When ordering materials that are to conform to railroad specifications, the Contractor shall notify the railway company, who will arrange for tests. The Contractor shall specify in each order that the materials are to be tested in accordance with the requirements of the railroad specifications and not those of the Department.
 2. **Highway specifications:** When ordering materials that are to conform to highway specifications, the Contractor shall specify in each order that the materials are to be tested in accordance with the requirements of Department specifications.

107.09—Construction Over or Adjacent to Navigable Waters.

The Contractor shall conduct the work on navigable waters so as to ensure the least possible obstruction to navigation and that the existing navigable depths will not be impaired except as may be allowed by a permit issued by the U.S. Coast Guard. The Contractor shall also provide and maintain temporary navigation lights and signals required by U.S. Coast Guard regulations for the protection of navigation. When the Engineer determines that the work has reached a point where such action may be taken, the channel(s) through the structure shall be promptly cleared of falsework, piling, or other obstructions placed therein or caused by the construction of the structure to the satisfaction of the Coast Guard.

107.10—Barricades and Warning Signs.

The Contractor shall take all necessary precautions for the protection of the work and the safety of the public as described herein and in Sections 104.04, 107.07, and 512.

Highways closed to traffic shall be protected by barricades and other warning devices as required by the Engineer. Barricades and warning devices shall be illuminated where required during darkness and low visibility. The Contractor shall erect warning devices in advance of a location on the project where operations or obstructions may interfere with the use of the road by traffic and at all intermediate points where the new work crosses or coincides with an existing roadway. The Contractor shall maintain sign faces and reflective surfaces of warning devices in a

clean and visible condition. Barricades, warning signs, lights, temporary signals, and other protective devices shall conform to the requirements of Section 512.

107.11—Use of Explosives.

The Contractor shall be responsible for damage resulting from the use of explosives. Explosives shall be stored in a secure manner in compliance with federal, state, and local laws and ordinances.

The Contractor shall notify each property and utility owner having a building, structure, or other installation above or below ground in proximity to the site of the work of his intention to use explosives. Notice shall be given sufficiently in advance to enable the owners to take steps to protect their property. Notice shall not relieve the Contractor of responsibility for damage resulting from his blasting operations.

107.12—Protecting and Restoring Property and Landscape.

The Contractor shall preserve property and improvements along the lines of and adjacent to the work unless their removal or destruction is called for by the plans. The Contractor shall use suitable precautions to prevent damage to such property.

When the Contractor finds it necessary to enter on private property, he shall secure from the owner or lessee a written permit for such entry prior to moving thereon. An executed copy of this permit shall be furnished the Engineer.

The Contractor shall be responsible for damage or injury to property during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the method of executing the work or attributable to defective work or materials. This responsibility shall not be released until final acceptance of the project.

When direct or indirect damage is done to property by or on account of any act, omission, neglect, or misconduct in the method of executing the work or in consequence of the nonexecution thereof on the part of the Contractor, the Contractor shall restore such property to a condition similar or equal to that existing before such damage was done by repairing, rebuilding, or restoring, as may be directed by the Engineer, or making settlement with the property owner. The Contractor shall secure from the owner a release from any claim against the Department without additional compensation therefor. A copy of this release shall be furnished the Engineer.

107.13—Responsibility for Damage Claims.

The Contractor shall indemnify and save harmless the State, the Board, and its officers, agents, and employees, as well as the city, town, county, or other municipality in which the work is performed and their officers, agents, and employees, from suits, actions, or claims brought for or on account of any injuries or damages received or

sustained by any person, persons, or property resulting from or arising out of the work performed by the Contractor, or by or in consequence of any neglect in safeguarding the work, through the use of unacceptable materials in the construction or the improvement, or resulting from any act or omission, neglect, or misconduct of the Contractor; or by or on account of any claims or amounts recovered by infringement of any patent, trademark, or copyright. The Commissioner may retain as much of the monies due the Contractor under and by virtue of his Contract as the State considers necessary to ensure that a fund will be available to pay a settlement or judgment of such suits, actions, or claims. If no monies are due, the Contractor's surety will be held until all such claims and actions have been settled and suitable evidence to that effect has been furnished the Board. Any extension of time granted the Contractor in which to complete the Contract shall not relieve him or his surety of this responsibility.

It is not intended by any of the provisions of any part of the Contract to create the public or any member thereof as a third party beneficiary hereunder or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

When any act, omission, or other action of the Contractor occurs that affects the health, safety, or welfare of the public, the Engineer will direct the Contractor to take prompt action to repair, replace, or restore the damage or injury within a time frame established by the Engineer. If the Contractor fails to make such repair, replacement, or restoration within the established time frame, the Engineer will have the damage or injury repaired, replaced, or restored and will deduct the cost of such repair, replacement, or restoration from monies due the Contractor.

107.14—Environmental Stipulations.

By signing the bid, the bidder shall have stipulated (1) that any facility to be used in the performance of the Contract (unless the Contract is exempt under the Clean Air Act as amended [42 U.S.C. 1857, et seq., as amended by P.L. 91-604], the Federal Water Pollution Control Act as amended [33 U.S.C. 1251 et seq. as amended by P.L. 92-500], and Executive Order 11738 and regulations in implementation thereof [40 C.F.R., Part 15]) is not listed on the EPA's List of Violating Facilities pursuant to 40 C.F.R. 15.20; and (2) that the Department will be promptly notified prior to the award of the Contract if the bidder receives any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be used for the Contract is under consideration to be listed on the EPA's List of Violating Facilities.

No separate payment will be made for the work or precautions described herein except where provided for as a specific item in the Contract or except where provision has been made for such payment in these specifications.

- (a) **Erosion and Siltation:** The Contractor shall exercise every reasonable precaution, including temporary and permanent measures, throughout the duration of the project to control erosion and prevent siltation of adjacent lands, rivers, streams, wetlands, lakes, and impoundments. Siltation control

measures shall be applied to erodible material exposed by any activity associated with construction, including clearing and grubbing, but not limited to local material sources, stockpiles, disposal areas, and haul roads.

The Contractor shall comply with the requirements of Section 301.02. Should the Contractor as a result of negligence or noncompliance leave an area exposed more than 15-days, the cost of temporary seeding and or mulching shall be at Contractor's own expense. If the delay is due to circumstances beyond the Contractor's control, the Department will be responsible for the expense.

Temporary measures shall be coordinated with work to ensure effective, and continuous erosion and siltation control. Permanent erosion control measures and drainage facilities shall be installed as the work progresses.

The Contractor shall have, within the limits of the project, an employee certified by the Department of Conservation and Recreation in Erosion and Sediment Control who shall inspect erosion and siltation control devices and measures for proper installation and deficiencies immediately after each rainfall, at least daily during prolonged rainfall, and weekly when no rainfall event occurs. Deficiencies shall be corrected immediately. Failure on the part of the Contractor to maintain appropriate erosion and siltation control devices in a functioning condition may result in the Engineer notifying the Contractor in writing of specific deficiencies. If the Contractor fails to correct or take appropriate actions to correct the specified deficiencies within 24-hours after receipt of such notification, the Department may do one or more of the following, require the Contractor to suspend work in other areas and concentrate efforts toward correcting the specified deficiencies, hold progress estimates, or proceed to correct the specified deficiencies and deduct the entire cost of such work from monies due the Contractor. Failure of the Contractor to maintain a certified Erosion and Sediment Control employee within the limits of the project will result in the Engineer suspending work related to any land disturbing activity until such time as a certified Erosion and Sediment Control employee is present on the project.

(b) **Pollution:**

1. **Water:** The Contractor shall exercise every reasonable precaution throughout the duration of the project to prevent pollution of rivers, streams, and impoundments. Pollutants such as chemicals, fuels, lubricants, bitumens, raw sewage, paints, sedimentation, and other harmful material shall not be discharged into or alongside rivers, streams, or impoundments or into channels leading to them.

Construction discharge water shall be filtered to remove deleterious materials prior to discharge into state waters. During specified spawning seasons, discharges and construction activities in spawning areas of state waters shall be restricted so as not to disturb or

inhibit aquatic species that are indigenous to the waters. Neither water nor other effluence shall be discharged onto wetlands or breeding or nesting areas of migratory waterfowl. When used extensively in wetlands, heavy equipment shall be placed on mats. Temporary construction fills and mats in wetlands and flood plains shall be constructed of approved nonerodible materials and shall be removed by the Contractor to natural ground when the Engineer so directs.

If the Contractor dumps, discharges, or spills any oil or chemical that reaches or has the potential to reach a waterway, he shall immediately notify all appropriate jurisdictional state and federal agencies in accordance with the requirements of Section 107.01 and shall take immediate actions to contain, remove, and properly dispose of the oil or chemical.

Excavation material shall be disposed of in approved areas above the mean high water mark shown on the plans in a manner that will prevent the return of solid or suspended materials to state waters. If the mark is not shown on the plans, the mean high water mark shall be considered the elevation of the top of stream banks.

Constructing new bridge(s) and dismantling and removing existing bridge(s) shall be accomplished in a manner that will prevent the dumping or discharge of construction or disposable materials into rivers, streams, or impoundments.

Construction operations in rivers, streams, or impoundments shall be restricted to those areas where channel changes are shown on the plans and to those that must be entered for the construction of structures. Rivers, streams, and impoundments shall be cleared of falsework, piling, debris, or other obstructions placed therein or caused by construction operations.

The Contractor shall prevent stream constriction that would reduce stream flows below the minimum, as defined by the State Water Control Board, during construction operations.

If it is necessary to relocate an existing stream or drainage facility temporarily to facilitate construction, the Contractor shall design and provide temporary channels or culverts of adequate size to carry the normal flow of the stream or drainage facility. The Contractor shall submit a temporary relocation design to the Engineer for review and acceptance in sufficient time to allow for discussion and correction prior to beginning the work the design covers. Costs for the temporary relocation of the stream or drainage facility shall be included in the contract price for the related pipe or box culvert.

Temporary bridges or other structures shall be used wherever an appreciable number of stream crossings will be made.

Construction operations near rivers, streams, or impoundments may be subject to water quality permit jurisdiction. Clearing and grubbing within 100 feet of the limits of ordinary high water or a delineated wetland will not be permitted until authorized by the Engineer. Once started, work in a jurisdictional area shall be continuously prosecuted until completed.

2. **Air:** The Contractor shall comply with the provisions of Section 107.01 and the State Air Pollution Control Law and Rules of the State Air Pollution Control Board, including notifications required therein.

Burning shall be performed in accordance with of applicable local laws and ordinances and under the constant surveillance of watchpersons. Care shall be taken so that the burning of materials does not destroy or damage property or cause excessive air pollution. The Contractor shall not burn rubber tires, asphalt, used crankcase oil, or other materials that produce dense smoke. Burning shall not be initiated when atmospheric conditions are such that smoke will create a hazard to the motoring public or airport operations. Provisions shall be made for flagging vehicular traffic if visibility is obstructed or impaired by smoke. At no time shall a fire be left unattended.

Asphalt mixing plants shall be designed, equipped, and operated so that the amount and quality of air pollutants emitted will conform to the Rules of the State Air Pollution Control Board.

Emission standards for asbestos incorporated in the EPA's National Emission Standards for Hazardous Air Pollutants apply to the demolition or renovation of any institutional, commercial, or industrial building, structure, facility, installation, or portion thereof that contains friable asbestos.

3. **Noise:** The Contractor's operations shall be performed so that exterior noise levels measured during a noise-sensitive activity shall be not more than 80 decibels. *Noise-sensitive activity* is any activity for which lowered noise levels are essential if the activity is to serve its intended purpose. Such activities include, but are not limited to, those associated with residences, hospitals, nursing homes, churches, schools, libraries, parks, and recreational areas.

The Department may monitor construction-related noise. If construction noise levels exceed 80 decibels, the Contractor shall take corrective action before proceeding with operations. The Contractor shall be responsible for costs associated with the abatement of construction noise and the delay of operations attributable to noncompliance with these requirements.

The Department may prohibit or restrict to certain portions of the project any work that produces objectionable noise between 10 P.M.

and 6 A.M. If other hours are established by local ordinance, the local ordinance shall govern.

Equipment shall in no way be altered so as to result in noise levels that are greater than those produced by the original equipment.

When feasible, the Contractor shall establish haul routes that direct his vehicles away from developed areas and ensure that noise from hauling operations is kept to a minimum.

These requirements are not applicable if the noise produced by sources other than the Contractor's operation at the point of reception is greater than the noise from the Contractor's operation at the same point.

- (c) **Forests:** The Contractor shall take all reasonable precautions to prevent and suppress forest fires in any area involved in construction operations or occupied by him as a result of such operations. The Contractor shall cooperate with the proper authorities of the state and federal governments in reporting, preventing, and suppressing forest fires. Labor, tools, or equipment furnished by the Contractor upon the order of any forest official issued under authority granted the official by law shall not be considered a part of the Contract. The Contractor shall negotiate with the proper forest official for compensation for such labor, tools, or equipment.
- (d) **Archeological, Paleontological, and Rare Mineralogical Findings:** In the event of the discovery of prehistoric ruins, Indian or early settler sites, burial grounds, relics, fossils, meteorites, or other articles of archeological, paleontological, or rare mineralogical interest during the prosecution of work, the Contractor shall act immediately to suspend work at the site of the discovery and notify the Engineer. The Engineer will immediately notify the proper state authority charged with the responsibility of investigating and evaluating such finds. The Contractor shall cooperate and, upon request by the Engineer, assist in protecting, mapping, and removing the findings. Labor, tools, or equipment furnished by the Contractor for such work will be paid for in accordance with the requirements of Section 104.03. Findings shall become the property of the State unless they are located on federal lands, in which event they shall become the property of the U.S. government.

When such work delays the progress of the work, the Engineer will give consideration to adjustments in the contract time limit in accordance with the requirements of Section 108.09.

107.15—Opening Sections of Projects to Traffic.

When specified in the Contract or when directed by the Engineer, certain sections of the work may be opened to traffic. Such opening shall not constitute acceptance of the work or any part thereof or a waiver of any provision of the Contract.

On any section of the work opened by order of the Engineer where the Contract does not provide for traffic to be carried through the work and the Contractor has not been dilatory in prosecuting the work, the Contractor will not be required to assume any expense entailed in maintaining the road for traffic. Such expense will be borne by the Department or will be compensated for in accordance with the requirements of Section 109.05. Repair of slides and repair of damage attributable to traffic will be compensated for in accordance with the requirements of Section 109.05. The cost of all other repairs shall be borne by the Contractor. Slides shall be removed by the Contractor in accordance with the requirements of Section 303.

On any section of the work opened by order of the Engineer where the Contract does not provide for traffic to be carried through the work, any additional cost for the completion of other items of work that are occasioned because of the changed working conditions will be compensated in accordance with the requirements of Section 109.05.

If the Contractor is dilatory in completing the work, he shall not be relieved of the responsibility for maintenance during the period the section is opened to traffic prior to final acceptance. Any expense resulting from the opening of such portions under these circumstances, except slides, shall be borne by the Contractor. The Contractor shall conduct the remainder of the construction operations so as to cause the least obstruction to traffic.

107.16—Contractor's Responsibility for Work.

Until final acceptance of the work by the Engineer in accordance with the requirements of Section 105.15, the Contractor shall have charge and care thereof and shall take every precaution against damage to any part thereof by action of the elements or from any other cause. The Contractor shall rebuild, repair, restore, and make good damage to any portion of the work occasioned by any of the foregoing causes before final acceptance and shall bear the expense thereof. The Department may reimburse the Contractor for repair of damage to work attributable to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor.

In case of 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 work, provide for erosion control and drainage, and erect any necessary temporary structures, signs, or other facilities at his own expense. During the 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 important vegetation against damage.

107.17—Contractor's Responsibility for Utility Property and Services.

At points where the Contractor's operations are adjacent to the properties of any utility, including railroads, and damage to which might result in considerable

expense, loss, or inconvenience, work shall not commence until arrangements necessary for the protection thereof have been completed.

The Contractor shall cooperate with owners of utility lines so that removal and adjustment operations may progress in a reasonable manner, duplication of adjustment work may be reduced to a minimum, and services rendered by those parties will not be unnecessarily interrupted.

If any utility service is interrupted as a result of accidental breakage or of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the authority in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority. When the Contractor's work operations require the disconnection of "in service" fire hydrants, the Contractor shall notify the locality's fire department or communication center at least 24 hours prior to disconnection. In addition, the Contractor shall notify the locality's fire department or communications center no later than 24 hours after reconnection of such hydrants. The Contractor shall be responsible for any damage to utilities that is attributable to his neglect or methods of performing the work.

Nothing in this section shall be construed to be in conflict with Section 107.12.

The Contractor shall comply with all requirements of the *Virginia Underground Utility Damage Prevention Act* § 56-265.14 (the Miss Utility law). The Contractor shall wait a minimum of 48 hours after notifying the Miss Utility notification center before commencing excavation work. The Contractor may commence excavation work after 48 hours only if confirmed through the Ticket Information Exchange (TIE) System that all applicable utilities have either marked their underground line locations or reported that no lines are present in the work vicinity. The Contractor shall wait an additional 24 hours before commencing excavation operations if any utility operators have failed to respond to the Ticket Information Exchange within the first 48 hours.

107.18—Furnishing Right of Way.

The Department will secure necessary rights of way and easements in advance of construction. The Department will not be responsible for any delay in the acquisition of a right of way other than consideration of an extension of time. Easements for temporary uses and detours requested by the Contractor and approved by the Department in lieu of a detour within the right of way or easement area shall be acquired by the Contractor without the Department being a party to the agreement.

107.19—Personal Liability of Public Officials.

In carrying out any of the provisions of these specifications or in exercising any power or authority granted to them by or within the scope of the Contract, there

shall be no liability upon the Board, Commissioner, Engineer, or their authorized representatives, either personally or as officials of the State. In all such matters, they act solely as agents and representatives of the State.

107.20—No Waiver of Legal Rights.

The State shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after final acceptance of the work and payment therefor from showing (1) the true amount and character of the work performed and materials furnished by the Contractor, (2) that any such measurement, estimate, or certificate is untrue or incorrectly made, or (3) that the work or materials do not conform with the provisions of the Contract. The State shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Contractor or his surety, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Department or any representative of the Department nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department shall operate as a waiver of any portion of the Contract or of any power herein reserved or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

**SECTION 108—PROSECUTION AND
PROGRESS OF WORK**

108.01—Subcontracting.

No portion of the Contract shall be subcontracted or otherwise disposed of without the written consent of the Engineer.

The Contractor shall perform with his own organization work amounting to not less than 30 percent of the original contract value.

The Contractor shall not subcontract any part of the contract work to a Contractor who is not prequalified with the Department in accordance with the requirements of Section 102.01. This restriction does not apply to contract specialty items, consultants, manufacturers, suppliers, or haulers. Consent to subcontract or otherwise dispose of any portion of the contract work shall not relieve the Contractor of any responsibility for the fulfillment of the entire contract.

108.02—Notice to Proceed.

The Engineer will issue a Notice to Proceed within 30 days after execution of the Contract by the Department. The contract time will start at the commencement of work or on the date specified in the Notice to Proceed, whichever is earlier. In no case