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106.9-SILENCE OF SPECIFICATIONS:

The apparent silence of these Specifications, Supplemental Specifications, plans and Special Provisions as to any detail, or the apparent omission from them of a detailed description concerning any point shall be regarded as meaning that only material and workmanship of acceptable quality are to be used.

SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO
PUBLIC

107.1-LAWS TO BE OBSERVED:

The Contractor shall keep fully informed of all Federal and State laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such laws, ordinances, regulations, orders, or decrees, whether by themselves, their subcontractors or their employees.

107.2-PERMITS, LICENSES AND TAXES:

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

107.3-PATENTED DEVICES, MATERIALS, AND PROCESSES:

If the Contractor employs any design, devise, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the Division, and affected third party, or political subdivision from and claims for infringement by reasons of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Division for any costs, expenses, and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of the work.

107.4-RESTORATION OF SURFACES OPENED BY PERMIT:

The right to construct or reconstruct any utility service in the highway or street or to grant permits for same, at any time, is expressly reserved by the Division for the proper authorities of the municipality in which the work is done, and the Contractor shall not be entitled to any damages either for the digging up of the street or for any delay occasioned.

Any individual, firm, or corporation wishing to make an opening in the highway must secure a permit from the Division. The Contractor shall allow parties bearing such permits, and only those parties, to make openings in the highway. The Contractor shall, when ordered by the Engineer, make in an acceptable manner all necessary repairs due to such openings and such necessary work will be paid for as "Extra Work", or as provided in these Specifications, and will be subject to the same conditions as original work performed.

107.5-FEDERAL-AID PROVISIONS:

When the United States Government pays any portion of the cost of a project, the Federal Laws and the Rules and Regulations made pursuant to such laws must be observed by the Contractor, and the work shall be subject to the inspection of the appropriate Federal Agency.

Such inspection shall in no sense make the Federal Government a party to the Contract and will in no way interfere with the rights of either party hereunder.

107.6-SANITARY PROVISIONS:

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of their employees as may be necessary to comply with the requirements of the State and local Boards of Health, or of other bodies or tribunals having jurisdiction. The Contractor shall not create, commit, or maintain a public nuisance.

107.7-PUBLIC CONVENIENCE AND SAFETY:

The Contractor shall at all times so conduct their work as to assure the least possible obstruction to traffic. The safety and convenience of the general public and the residents along the highway and the protection of persons and property shall be provided for by the Contractor as specified under [104.5](#).

The Contractor shall comply with all applicable Federal, State, and local laws governing safety, health and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on their own responsibility, or as the Engineer may determine, reasonable necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the Contract.

The Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926, formerly Part 1518, as revised from time to time), promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

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107.7.1 – Safety Plan:

The Contractor shall comply with this subsection if the Total Contract Bid Amount exceeds \$2,000,000 or is otherwise noted on the plans. The contractor will provide a copy of the company comprehensive safety and health program and the name of the company safety officer at the preconstruction conference or prior to start of work. A copy of the comprehensive safety and health program for each subcontractor and the name of the company safety officer must be submitted with the request for subcontract approval. The company comprehensive safety and health program should be in accordance with ANSI A10.38-1991, “Basic Elements of an Employer Program to Provide a Safe and Healthful Work Environment” or equivalent.

A site specific safety plan covering the work of the prime contractor and all known subcontractors must be prepared and submitted at the preconstruction conference or prior to the start of work. The site specific plan must include the name of the competent person(s) responsible for safety at the project site. As additional subcontracts are negotiated the site specific safety plan for that work can be submitted with the subcontract request.

Contractor employees shall be provided hazard recognition and avoidance training. Further, newly employed workers shall be provided safety orientation training prior to being assigned any task. This training can be provided by the contractor or the contractor’s representative. Likewise, training provided by other sources based on an employee’s initiative or his or her affiliation with the other groups is permissible. All training should be current and up to date with appropriate refresher courses provided if previous training was not within the last three years.

All contractor safety training shall be administered or monitored by the contractor’s qualified representative, known as the company safety officer. “Qualified” means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training and experience, has successfully demonstrated his or her ability to solve or resolve problems relating to the subject matter, the work or the project. Acceptable training for this individual to be considered qualified includes, but is not limited to, completion of the 30-hour OSHA 500 Trainer Course in Occupational Safety and Health Standards for the Construction Industry or its equivalent.

The Contractor or Subcontractor working on the project will conduct weekly safety “tool box” talks to discuss relevant safety issues and this meeting will be open to attendance and active participation by the on-site Division of Highways Staff.

107.8 - RAILWAY-HIGHWAY PROVISIONS:

The Contractor shall comply with the following provisions when performing any operations adjacent to or within the existing right of way of the Railroad. References to the Railroad’s Chief Engineer can also mean an authorized representative.

107.8.1 - NOTICE OF STARTING WORK: The Contractor shall not

start any work on Railroad right of way until he has complied with the following conditions:

- (a) Give the Railroad's Chief Engineer written notice at least ten days in advance of the date he proposes to begin work on or adjacent to the Railroad right of way.
- (b) Obtain written approval from the Railroad of the Railroad Protective Insurance coverage as required herein.
- (c) Obtain written authorization from the Railroad to begin work on Railroad right of way. This authorization can be expected within two weeks after insurance has been approved.

107.8.2 - INSURANCE: The Contractor shall secure and provide, until all work under the terms of the project is satisfactorily completed and accepted, the following types of insurance in the amounts and form as hereinafter set forth:

- (a) Contractor's Public Liability Insurance and Protective Public Liability Insurance: With respect to the operations performed by the Contractor or the subcontractors, the Contractor must carry in his own behalf this insurance providing a limit of not less than \$2,000,000 bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. This limit may be single limit of primary coverage or a combination of primary and excess coverage which will meet the \$2,000,000 requirement. Said insurance policy shall include coverage for explosion, collapse and underground hazard ("XCU" coverage). A certificate of insurance shall be provided to the Railroad before work begins and said certificate shall provide Railroad thirty (30) days advance written notice of cancellation or material change in insurance coverage. If any part of the work is sublet, public liability insurance and evidence thereof in the same amounts as required of the Prime Contractor, shall be provided by or in behalf of the subcontractor to cover his operations on railroad right of way.
- (b) Railroad Protective Liability Insurance: With respect to the operations performed, the Contractor or any subcontractors, the Contractor must provide in the name of Railroad, a policy providing a limit of \$2,000,000 per occurrence bodily injury or death and property damage combined. Said insurance shall be furnished with an aggregate of \$6,000,000 applying separately to each annual period. This policy shall be written on the ISORIMA Form of Railroad Protective Insurance (ISO Form CG00350690) with Pollution Exclusion Amendment ISO Form CG 28311185 or their

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equivalents). The policy of insurance specified in this section shall be countersigned by a resident agent of the State of West Virginia in accordance with Section 103.6.5. The original of the policy shall be submitted to and be approved by the Railroad before work is commenced on its right of way.

107.8.3 - USE OF GRADE CROSSINGS: If the Contractor desires a temporary grade crossing of the Railroad's tracks other than that shown in the project plans; to use an existing private grade crossing; or to use an existing public grade crossing with unlicensed construction equipment, the Contractor shall make arrangements in writing with the Railroad and will be required to bear all costs, including flagging, incidental to such crossings.

107.8.4 - INTERFERENCE WITH RAILROAD OPERATIONS: All work to be performed by the Contractor shall be performed in a manner agreeable to the Railroad's Chief Engineer. The Contractor shall use reasonable care and diligence and cooperate with officials of the Railroad in order to avoid accidents, damages or unnecessary delay to, or interference with train movement of the Railroad.

When work within Railroad right of way is of a nature that it impedes Railroad operations such as, but not limited to, use of runaround tracks or the necessity for reduced speed, the Contractor shall schedule and conduct his operations so that such impediment is reduced to the absolute minimum.

Any cost incurred by the Railroad for repairing damages to its property or to property of its tenants, caused by or resulting from the operations of the Contractor, shall be paid directly to the Railroad by the Contractor.

The Contractor shall assume all liability for any and all damages to his work, employees, subcontractor, equipment and materials caused by Railroad traffic.

No charge or claim of the Contractor against either the Division or the Railroad will be allowed for hinderance or delay on account of train traffic, work done by Railroad, delay incident to or necessary for safe operation and maintenance of the railroad or any delays due to compliance with these special provisions.

107.8.5 - CONSTRUCTION PROCEDURES: It shall be the Contractor's responsibility to arrange a schedule with the Railroad for accomplishing his work and the Railroad's or its tenants work. The Contractor in arranging a schedule shall ascertain, from the Railroad, the lead time required for assembling crews and materials and shall make due allowance therefor.

The Contractor shall submit to the Railroad's Chief Engineer, with a copy to the Division of Highways, work schedule and information regarding methods and procedures for performing work, e.g., plans and specifications for shoring and sheeting, and for protective shields covering all Railroad facilities. The Contractor shall obtain Railroad approval before commencing said work.

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The Contractor shall take special precaution and care when excavating for shoring pits and footers adjacent to tracks and in driving piles to always provide adequate lateral support for the tracks and the loads which they carry, so as not to disturb the track alignment and surface and to avoid obstructing track clearances with working equipment, tools or materials.

A copy of the Contractor's blasting sequence will be provided to the railroad for their information prior to any blasting. The Contractor shall obtain specific approval of the Railroad's Chief Engineer for use of explosives on Railroad property.

All construction equipment that is parked near the track shall be effectively immobilized so that it cannot be moved by unauthorized persons.

Materials and equipment shall not be stored where they will interfere with Railroad operations, nor on the right of way of the Railroad without first having obtained written permission from the Railroad's Chief Engineer.

The Contractor will be required to maintain all ditches and drainage structures and keep them free of silt or other obstructions, to promptly repair eroded areas within Railroad right of way and to repair any other damage to the property of the Railroad or its tenants which may be the results of their operations.

Upon completion of the work, the Contractor shall remove from within the limits of the Railroad's right of way, all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings which belong to the Contractor and leave said right of way in a condition satisfactory to the Railroad's Chief Engineer.

107.8.6 - TRACK CLEARANCES: The minimum track clearances to be adhered to by the Contractor during construction will be 15 feet (3 m) from centerline of the track or as approved by the Railroad's Chief Engineer. However, before undertaking any work within Railroad right of way or before placing any obstruction over any track, the Contractor shall:

- (a) Notify the Railroad's Chief Engineer at least 72 hours in advance of work.
- (b) Receive assurance from the Railroad's Chief Engineer that arrangements have been made for any flagging services necessary.
- (c) Receive permission from the Railroad's Chief Engineer to proceed with the work.

107.8.7 - FLAGGING SERVICES: Under the terms of the agreement between the Division and the Railroad, the Railroad has sole authority to determine the need for flagging required to protect its operations.

In general, the services of Railroad flaggers will be requested when the Contractor's operations will be on or over the Railroad's right of way: (a) during the excavation, placing and removal of cofferdams, sheeting, shoring, driving of piling or placing of concrete footers adjacent to the track; (b) driving of pile bents adjacent to the track; (c) construction of the permanent structure including erection and removal of falsework, bracing or forms over or adjacent

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to the track; (d) transporting material or equipment across the track; (e) any operations involving direct interference with and/or coming in the close vicinity of power lines or Railroad signal and communication lines, underground cables, fuel oil facilities or pipelines which might result in fire or damage to such facilities to endanger Railroad operations or to endanger the public in the transacting of business on Railroad right of way; (f) fouling of operating clearances or reasonable probability of accidental hazard to Railroad traffic; (g) during removal of portions of existing structures immediately over or adjacent to a track; and (h) at all other times when the Railroad's Chief Engineer has determined conditions require such protection.

Flagging hours shown in the plans shall be reviewed by the Contractor and will be used as the approved flagging hours. If the Contractor feels that the hours shown in the plans are not correct, he shall submit to the Engineer, in writing within 60 days of the award of the project, his estimate for review and approval. The Department shall have 30 days to approve the revised flagging hours. Additional hours may be permitted per Section 104.9.

Additionally, all flagging charges resulting from any work done solely for the benefit of the Contractor will be deducted from the current estimate, due the Contractor.

If the Contractor works within distances that violate instructions given by the Railroad's Chief Engineer or performs work that has not been coordinated with the Railroad's Chief Engineer, a flagman may be required full time at Contractor's expense until the project has been completed.

Any work to be performed by the Contractor which requires flagging service or inspection service (watchman) shall be deferred by the Contractor until the flagging service or inspection service required by the Railroad is available at the job site.

The Contractor shall furnish to the Railroad and the Division of Highways a schedule for all work required to complete the portion of the project within Railroad right of way and arrange for a job site meeting between the Contractor, the Division of Highways, and the Railroad's Chief Engineer. A flagman may not be provided until the job site meeting has been conducted and the Contractor's work schedule provided.

The Contractor will be required to give the Railroad's Chief Engineer at least ten working days of advance written notice of his intent to begin work within Railroad right of way. Once work is begun, and is then suspended at any time for any reason, the Contractor will be required to give the Railroad's Chief Engineer at least three working days advance notice before resuming work on Railroad right of way. Such notice shall include sufficient details of the proposed work to enable the Railroad representative to determine if flagging will be required. Initially, it may take up to 30 days to obtain flagging from the Railroad. When flagging begins, the flagman is usually assigned by the Railroad to work at the project site on a continual basis until no longer needed. A flagman cannot be called for on a spot basis. If flagging becomes unnecessary and is suspended, it may again take up to 30 days to obtain a flagman from the Railroad. Due to Railroad labor agreements, it may be

necessary to give five working days notice before flagging service may be discontinued and responsibility for payment stopped.

The Division of Highways will reimburse the Railroad directly for all costs incurred for flagging services by Railroad personnel, including any temporary grade crossing shown in the project plans up to the amount of hours shown on the Division's Project plans. In the event the Division of Highways is required to reimburse the Railroad for flagging service in excess of the approved flagging hours, such excess cost will be deducted from the monthly and/or final statements of money due the Contractor.

The Railroad flagman assigned to the project will be responsible for notifying the Project Engineer upon arrival at the job site on the first working day that flagging services begin and on the last day that he performs such services. This will be required for each separate period that services are provided. The Project Engineer will document such notification in the project records. When requested, the flagman will also sign the Inspector's daily report form showing daily time spent and activity performed at the project site.

The Contractor and Division of Highways will review and sign the Railroad flagman's time sheet, attesting that the flagman was present during the time recorded. Flagman may be removed by Railroad if form is not signed. If flagman is removed, the Contractor will not be allowed to work on or re-enter the Railroad right of way until the issue is resolved.

107.8.8 - FAILURE TO COMPLY: In the event the Contractor violates or fails to comply with any of the requirements of these provisions:

- (a) The Railroad's Chief Engineer may require that the Contractor vacate Railroad property.
- (b) The Division may stop all work adjacent to the Railroad.

Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad's Chief Engineer and the Division of Highways.

All costs incurred resulting from compliance with these provisions shall be incidental to the items in the contract and no separate payment shall be made.

107.9-BRIDGES OVER NAVIGABLE WATERS:

All work on navigable waters shall be so conducted that free navigation of the waterways will not be interfered with and that the existing navigable depths and vertical clearances will not be impaired except as by the U.S. Army Corps of Engineers and/or the U.S. Coast Guard.

107.10-BARRICADES AND WARNING SIGNS:

The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs, and other traffic control devices, except as provided by [104.5](#), and the Contractor shall take all

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necessary precautions for the protection of the work and safety of the public. Highways closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness. Suitable warning signs shall be provided to properly control and direct traffic.

The Contractor shall erect warning signs in advance of any place on the project where operations 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 road. Such warning signs shall be erected in accordance with the Plans furnished.

All barricades, warning signs, lights, temporary signals, and other protective devices must conform with the Standard "Traffic Control for Street and Highway Construction and Maintenance Operations," Published by the West Virginia Division of Highways, and the provisions of 715.9.

107.11-USE OF EXPLOSIVES:

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

All explosives shall be stored in a secure manner, in compliance with all laws and ordinances, and all such storage places shall be clearly marked. Where no local laws or ordinances apply, storage shall be provided satisfactory to the Engineer and in general not closer than 1,000 ft. (305 meters) from the road or from any building or camping area or place of human occupancy.

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

107.12-PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE:

The Contractor shall be responsible for the preservation of all public and private property and shall protect carefully from disturbance or damage all land monuments and property marks until the Engineer has witnessed or otherwise referenced their location and shall not move them until directed.

The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the work, resulting from any act, omission, neglect, or misconduct in the Contractor's manner or method of executing the work, or at any time due to defective work or materials, and this responsibility will not be released until the project shall have been completed and accepted.

When or where and direct or indirect damage or injury 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 nonexecution thereof by the Contractor, the Contractor shall restore, at their own expense, such property to a condition similar or equal to that existing before such damage or injury was

done, by repairing, rebuilding, or otherwise restoring as may be directed, or the Contractor shall make good such damage or injury in as acceptable manner.

107.13-FOREST PROTECTION:

In carrying out work within or adjacent to State or National Forests, the Contractor shall comply with all regulations of the State Fire Marshall, Division of Natural Resources, or any other authority having jurisdiction, governing the protection of forests and the carrying out of work within forests, and shall observe all sanitary laws and regulations with respect to the performance of work in forest areas. The Contractor shall keep the areas in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tank, and other structures in accordance with the requirements of the Forest Supervisor.

The Contractor shall take all reasonable precaution to prevent and suppress forest fires and shall require their employees and subcontractors, both independently and at the request of forest officials, to do all reasonably within their power to prevent and suppress and to assist in preventing and suppressing forest fires and to make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire seen by them.

107.14-RESPONSIBILITY FOR DAMAGE CLAIMS:

The Contractor shall indemnify and save harmless the Division, its officers and employees, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or 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 "Worker's Compensation Act," or any other law, ordinance, order, or decree; and so much of the money due the Contractor under and by virtue of their Contract as may be considered necessary by the Division for such purpose may be retained for the use of the Division or, in case no money is due, their surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Division; except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that the Contractor is adequately protected by public liability and property damage insurance.

107.15-OPENING SECTIONS OF PROJECT TO TRAFFIC:

At the option of the Engineer, certain sections of the work may be opened for traffic. Such opening will not constitute acceptance of the work, or any part thereof, or a waiver of any provisions of the Contract; provided however, that

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on such portions of the project as are accepted for use of traffic, the Contractor shall not be required to assume any expense entailed in maintaining the roadway for traffic. Such expense will be borne by the Division or will be compensated for in the manner provided in 109.4. Any damage to the highway not attributable to traffic which might occur on such section, except slides, shall be repaired by the Contractor at their expense. The removal of slides shall be performed by the Contractor and payment will be in accordance with 104.3. If the Contractor is dilatory in completing shoulders, drainage structures, or other features of the work, the Engineer may order all or a portion of the project open to traffic, but in such event the Contractor shall not be relieved of their liability and responsibility during the period the work is so opened prior to final acceptance. The Contractor shall conduct the remainder of their construction operations so as to cause the least obstruction to traffic.

107.16-CONTRACTOR'S RESPONSIBILITY FOR WORK:

Until final written acceptance of the project by the Engineer, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements, or from the nonexecution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof except damage to the work due to unforeseeable causes beyond the control of and without the fault of or negligence of the Contractor, including but not restricted to acts of God, of the public enemy or governmental authorities.

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

107.17-CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES:

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

The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of rearrangement work may be reduced to a minimum, and that services rendered

by those parties will not be unnecessarily interrupted.

In the event of interruption to water or utility services as a result of accidental breakage, or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with such authority in the restoration of service. If water service is interrupted, repair work shall be continuous until the service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

107.18-FURNISHING RIGHT-OF-WAY:

The Division will be responsible for securing all necessary right-of-way in advance of construction. Any exceptions will be indicated in the Contract.

107.19-PERSONAL LIABILITY OF PUBLIC OFFICIALS:

In carrying out any of the provisions of these Specifications, or is exercising and power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Commissioner, Engineer, or their authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the Division.

107.20-NO WAIVER OF LEGAL RIGHTS:

The Division shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the Contract. The Division shall not be precluded or estopped, notwithstanding and such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor or sureties, or both, such damage as it may sustain by reason of their failure to comply with the terms of the Contract. Neither the acceptance by the Division or any representative of the Division, 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 Division, shall operate as a waiver of any portion of the Contract or of any power 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.

**107.21-PROTECTION OF RIVERS, STREAMS, AND
IMPOUNDMENTS:**

107.21.1-Erosion and Siltation Control: The Contractor shall exercise every reasonable precaution throughout the life of the Project to prevent silting of rivers, streams, and impoundments such as lakes, reservoirs, etc. Construction of drainage facilities as well as performance of other contract

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work which will contribute to the control of siltation shall be carried out in conjunction with earthwork operations or as soon thereafter as is practicable.

The manual entitled "WVDOT Division of Highways Erosion and Sediment Control Manual, latest version is made a part of the Contract. Where any provision of said manual is in conflict with any special erosion and sediment control provision set out and contained in the Proposal and/or in the Plans of a project, the Proposal and/or Plans shall prevail.

Prior to suspension of construction operations for any appreciable length of time, the Contractor shall shape the top of earthwork in such a manner as to permit the runoff of rainwater and shall construct earth berms along the top edges of embankments to intercept runoff water. The berm construction shall not be permitted to decrease the stability of the embankment section. Temporary slope drains shall be provided to carry runoff from embankments which are located in the immediate vicinity of rivers, streams, and impoundments. The slope drains shall be located at approximate 500-ft (150 meter) intervals and shall be stabilized by paving or covering with waterproof materials. Preventive measures taken under this paragraph shall be adequate to control any runoff or erosion products from adjacent cut slopes. Should such preventative measures fail and an appreciable amount of material begins to erode into a river, stream, or impoundment, the Contractor shall act immediately to bring the siltation under control.

The erosion control measures shall be continued until the permanent drainage facilities have been constructed and until the project is accepted.

Unless otherwise approved in writing by the Engineer, construction operations in rivers, streams, and impoundments shall be restricted to those areas where channel changes are shown on the Plans and to those areas which must be entered for the construction of temporary or permanent structures. Rivers, streams, and impoundments shall be promptly cleared of all falsework, piling, debris, or other obstructions placed or caused by the construction operations.

Excavation from the roadway, channel changes, cofferdams, etc., shall not be deposited in or so near to rivers, streams, or impoundments that it will be washed away by high water or runoff.

Frequent fording of live streams with construction equipment will not be permitted; therefore, temporary bridges or other structures shall be used wherever an appreciable number of stream crossings are necessary. Unless otherwise approved in writing by the Engineer, mechanized equipment shall not be operated in live streams except as may be required to construct channel changes and temporary or permanent structures.

The location of all local material pits, other than commercially operated sources, and all waste areas shall be subject to the approval of the Engineer, and construction operations in these areas shall be so scheduled and conducted that during and after completion of the work, erosion will not result in water pollution.

107.21.2-Pollution: The Contractor shall exercise every reasonable

precaution throughout the life of the Project to prevent pollution of rivers, streams, or impoundments. Pollutions such as chemicals, fuels, lubricants, bitumens, raw sewage, products associated with bridge cleaning and painting, and other harmful wastes shall not be discharged into or alongside of rivers, streams, impoundments, or into natural or man-made channels leading thereto. The quality of the surface waters affected by construction shall meet the requirements of the West Virginia Code, Volume 8A, Chapter 22, Article 11.

The manual entitled, "West Virginia Division of Highways, Best Management Practice for Containment/Disposal of Waste Products Generated During Bridge Cleaning and Painting Activities". Latest addition, as amended is made part of the contract as a guide to follow for containment/disposal activities.

107.21.3-Basis of Payment: Except when pay items are specifically described and furnished as pay items in 642, Temporary Pollution Control, the water pollution and erosion and siltation control requirements set forth shall be at the expense of the Contractor.

107.22-PLANT PEST REGULATIONS:

The indiscriminate movement of nursery stock, hay or straw mulch, equipment and soil samples into and out of West Virginia constitutes a potential hazard to State and National Agriculture. Therefore, it shall be the responsibility of the prime Contractor to comply with all applicable State and Federal Plant Pest Regulations in the fulfillment of this contract.

Information regarding these regulations may be obtained from Plant Pest Control Division, West Virginia Department of Agriculture, Charleston, West Virginia 25305, or United States Department of Agriculture, Agriculture Research Service, Plant Pest Control Division, P.O. Box 1257, Roanoke, Virginia 24001.

107.23-AIR POLLUTION CONTROL:

The Contractor shall exercise every reasonable precaution throughout the life of the project to keep air pollution to a minimum. The Contractor shall also comply with the applicable regulations of the West Virginia Air Pollution Control Commission. During times of limited dispersion, construction operations may be suspended.

All plants in West Virginia producing bituminous concrete for the Division shall obtain a permit or certification from the West Virginia Air Pollution Control Commission.

107.24 - CLEAN WATER ACT/WETLANDS:

The Contractor will comply with all aspects of Section 404 of the Clean Water Act including any and all regards to wetlands on all work associated with the project. A wetland will not be filled or disturbed on the project or any work related to the project such as a haulroad, waste area, borrow pit or any other activity without a permit.

107.25 – LEAD EXPOSURE IN CONSTRUCTION

The Contractor will comply with all aspects of 29CFR, Part 1926, Lead Exposure in Construction, by the United States Department of Labor, Occupational Safety and Health Administration.

**SECTION 108
PROSECUTION AND PROGRESS**

108.1-SUBLETTING OF CONTRACT:

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or Contracts or any portion thereof, or of their right, title, or interest, without written approval of the Engineer prior to any of the subject work being performed. The Contractor will be permitted to sublet a portion thereof but shall perform, with their own organization, work amounting to not less than 50 percent of the total contract cost, except that any items designated in the Contract as "specialty items" may be performed by subcontract and the cost of any such specialty items so performed by subcontract may be deducted from the total cost before computing the amount of work required to be performed by the Contractor with their own organization. No subcontracts, or transfer of contract, shall in any case release the Contractor of their liability under the Contract and Bonds.

The Contractor shall request the approval of each subcontractor, including lower-tier subcontractors. Each subcontract, including lower-tier subcontracts, shall be in writing and shall physically contain all of the applicable provisions, requirements and specifications. The Contractor may certify that a copy of all the applicable provisions, requirements and specifications has been provided and is physically incorporated in each subcontract including lower-tier subcontracts. Requests for approval of DBE subcontractors, however, shall also be accompanied by a copy of the proposed subcontract without the required attachments.

The Contractor shall maintain a complete subcontract file including lower-tier subcontractors at the home office which shall be available to authorized personnel for review without notice or at any other appropriate location as determined by the Division after a five day notice. Such file may contain a single copy of all the applicable provisions, requirements and specifications in lieu of individual subcontract files containing the applicable attachments.

Roadside production of materials is construed to be the production of crushed stone, gravel, or other materials with portable or semiportable crushing, screening or washing plants established or re-opened in the vicinity of the work for the purpose of supplying materials to be incorporated into the work on a designated project or projects and in all cases, unless performed by the Contractor, shall be considered as subcontracting.

The purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mixed concrete or any other materials produced at and