

DELAWARE RIVER AND BAY AUTHORITY



Standard Specifications for Road and Bridge Construction

DECEMBER 15, 2014

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DIVISION 100

GENERAL PROVISIONS

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101.01.0 General. The titles and headings of the Sections, Subsections, and subparts herein are intended for convenience of reference and shall not be considered as having bearing on the interpretation of these Specifications.

Where a publication is referenced, the reference applies to the most recent date of issue as of the date bids are advertised, including interim publications, unless the reference includes a specified date or year. All references to Federal, State, Society, Institute and Association standards, specifications and codes shall unless otherwise noted, be understood to refer to the issues in effect on the date of the Advertisement for Bids.

Portions of these Specifications are written in the imperative mode. In sentences using imperative mode, the subject “the Contractor” is implied. Also implied in the language are “shall” or “shall be” or similar words and phrases. In all instances where “the Contractor” and “shall” or “shall be” are implied, the actions specified are solely the responsibility of the Contractor. In the referenced material sections, the subject may also be a vendor, fabricator, manufacturer, or combination thereof, who may be supplying the material, products, or equipment for the Project. The word “will” generally applies to decisions or actions of the Authority, Executive Director, or Engineer.

In the Contract as defined in Subsection 101.17.1, the following words: contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, satisfactory, unsatisfactory, sufficient, insufficient, rejected, condemned, or words with similar intent; mean by or to the Authority, subject in each case to the determination of the Authority, and subject to further review, as permitted by law or permitted elsewhere in these Specifications.

In the Contract, the words “or equal”, referring to a product, material, or process, mean “equal as determined by the Authority”.

In the Contract, the words “as indicated” or “indicated” mean “as indicated or indicated by the Contract”.

All references in the Standard Specifications to terms defined in this Section 101 in the plural shall also mean the singular and to the singular shall also mean the plural, unless the context otherwise requires.

101.02.1 Abbreviations. Wherever the following abbreviations, terms or pronouns are used in the Contract, the intent and meaning shall be interpreted as follows:

AA	Aluminum Association
AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AED	Associated Equipment Distributors
AGC	Associated General Contractors of America

AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ARA	American Railway Association
AREMA (AREA)	American Railway Engineering and Maintenance-of-Way Association
ARTBA	American Road and Transportation Builders Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
AWPA	American Wood Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
CFR	Code of Federal Regulations
COMDTPUB	Coast Guard Commandant Publication
DRBA	Delaware River and Bay Authority
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards
MIL	Military Specifications
MUTCD	Manual on Uniform Traffic Control Devices (For Streets and Highways)
NEC	National Electrical Code
NIST	National Institute of Standards and Technology
NLRB	National Labor Relations Board
OSHA	Occupational Safety and Health Administration
PCA	Portland Cement Association
PCI	Prestressed Concrete Institute
PTI	Post Tensioning Institute
SAE	Society of Automotive Engineers
SSPC	Steel Structures Painting Council
UL	Underwriters Laboratory, Incorporated

101.02.2 Alternate Pay Items. Additional or alternative Pay Items included in the Schedule of Items. The amount bid for an Alternate Pay Item is not included in the value of the Base Bid but is included in the value of the Total Price. The Bidder is notified at the time of Award of the Authority's decision to include or exclude an Alternate Pay Item. No additional compensation is to be made for the deletion of an alternative from the Contract and the Pay Item bid for such work shall be deleted from the Total Price.

101.03.0 Addendum. Contract revisions issued after advertisement of the Contract Documents and before bid opening.

101.04.0 Additional Work. Work for which a Contract item is already provided by the Contract.

101.05.0 Adjustment (or Contract Adjustment). A revision to the Project cost or time provided in accordance with Subsections 108.07 and 109.04.

101.06.1 Advertisement for Bids (or Advertisement). The public announcement stating that the Authority is inviting Bids for the work to be performed under the Contract and providing the time and place for the submission of the Bid.

101.06.2 Authority. The Delaware River and Bay Authority and shall include its authorized representative, the Executive Director.

101.07.1 Award. The Authority's acceptance of a Bid.

101.07.2 Awarded Contract Value. Base Bid plus the value of any Alternate Pay Items included in the Contract by the Authority.

101.08.1 Base Bid. The Total Price bid less the cost of the Alternate Pay Items.

101.08.2 Bid. The prepared Bid Forms furnished by the Authority, properly filled out and executed by a Bidder and submitted as his, her or its bid for the performance of the Project.

101.08.3 Bid Bond. The portion of the Bid Guaranty furnished in the form of a surety bond.

101.08.4 Bidder. An individual or legal entity acting directly or through a duly authorized representative, legally submitting a Bid.

101.09.0 Bid Documentation. All writings, working papers, computer printouts, charts, and data compilations that contain or reflect information, data, or calculations used by the Bidder to prepare the Bid submitted, including but not limited to material relating to the determination and application of:

- A. Equipment rates
- B. Overhead rates and related time schedules
- C. Labor rates
- D. Efficiency or productivity factors
- E. Arithmetic extensions
- F. Subcontractor and material supplier quotations

Any manuals standard to the industry used by the Bidder in determining the Bid are also considered bid documentation. These manuals may be included in the Bid Documentation by reference and shall show the name and date of the publication and the publisher.

The term "Bid Documentation" does not include documents provided by the Authority for the Bidder's use in the preparation of the Bid.

101.10.0 Bid Forms. The approved forms on which the Authority requires formal bids to be prepared and submitted for the work, generally including but not limited to: Bid Pages, Consent of Surety, Non-Collusion Affidavit, Qualification Questionnaire, Joint Venture, and Bid Bond.

101.11.1 Bid Guaranty. The security furnished with a Bid to ensure that the Bidder will enter into the Contract if the Contract is awarded.

101.11.2 Bid Pages. The bid sheets furnished by the Authority to be completed by the Bidder.

101.11.3 Blue Book. The Rental Rate Blue Book published by Machinery Information Division of K-III Directory Corporation, 1735 Technology Drive, Suite 410, San Jose, CA 95110.

101.12.0 Bridge. A structure, including supports, erected over a depression or an obstruction, such as water, highway, or railway and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of the roadway of more than 20' (6.096 m) between undercopings of abutments or extreme ends of openings for multiple boxes.

101.13.1 Calendar Day. Each and every day shown on the calendar, beginning and ending at midnight.

101.13.2 Chairperson. The Chairperson of the Authority, acting either directly or through a duly authorized representative.

101.14.0 Change Order. A written order issued by the Authority to the Contractor for a change to the Contract. Changes to the Contract are extra work, increases or decreases in Contract item quantities, or alterations to the Contract, and are within the scope of the Contract. A change order also establishes the basis and amount of payment for the change to the Contract and provides for any time extension necessitated by the change to the Contract.

101.15.1 Channel. A natural or artificial water course.

101.15.2 Chief Operating Officer. The Chief Operating Officer of the Authority acting either directly or through a duly authorized representative.

101.16.1 Completion. Completion of the Project occurs when the Work has been satisfactorily concluded under the Contract and the Contractor has satisfactorily executed and delivered to the Authority all documents, certificates, and proofs of compliance required by the Contract.

101.16.2 Consent of Surety. A form of agreement included in the Contract Documents pursuant to which a Surety agrees to provide certain bonds required under the Contract.

101.17.1 Contract.

The Contract shall include the Bid along with the fully executed Contract Agreement and Contract Bond, also generally including but not limited to the following: Advertisement for Bids, Specifications, Plans and any Addenda, Change Orders, Supplemental Agreements and other documents specifically issued in connection with the Project, all of which are to be treated as one instrument.

The Contract shall not be modified, altered, or otherwise changed by any oral promise, statement, or representation made either by the Authority or Contractor, unless such modification, alteration, or change is reduced to writing in accordance with the Contract.

101.17.2 Contract Agreement. The written Agreement between the Authority and the Contractor setting forth the obligation of the parties for the performance of the Work.

101.17.3 Contract Bond (Contract Payment and Performance Bond). The approved form of security furnished by the Contractor and the Contractor's Surety or Sureties to guarantee payment and performance of all obligations incurred by the Contractor on the Contract.

101.18.0 Contract Documents. The documents and forms, provided to the Contractor for bidding, as applicable to the specific Project, generally including but not limited to: Advertisement for Bids, Bid Pages, Consent of Surety, Non-Collusion Affidavit, Qualification Questionnaire, Joint Venture, Bid Bond, Contract Agreement, Contract Bond, Maintenance Bond, Contractor's Release of Liens, Specifications, Plans, State of Delaware prevailing wages, Federal prevailing wages (if applicable) and reference drawings.

101.19.0 Contract Item (Pay Item). A specifically described item of work for which a price is provided in the Contract.

101.20.0 Contract Time. The number of Days allowed for the completion of the Contract. When a calendar date of completion is specified, the work shall be completed on or before that specified completion date. Calendar day contracts shall be completed on or before the day indicated even when that date is a Saturday, Sunday, or holiday.

101.21.1 Contractor. The individual or legal entity named as such in the Contract, acting directly or through agents or employees and primarily liable for the acceptable performance of the Project and for the payment of all debts pertaining to the Project.

101.21.2 Contractor's Release of Lien. A form of agreement included in the Contract pursuant to which the Contractor certifies prior to final payment that all liens, claims and other demand arising in connection with the Work have been fully satisfied.

101.22.0 County. The county in which the work is to be performed.

101.23.0 Culvert. Any structure which provides an opening under any roadway, but is not classified as a bridge.

101.24.1 Days. Unless otherwise specified, Days as used in the Contract means Calendar Days.

101.24.2 DBE. A Disadvantaged Business Enterprise as defined by 49 CFR Part 26, certified by the Delaware Department of Transportation (DeIDOT) DBE Program, New Jersey Department of Transportation (NJDOT) DBE Program, New Jersey Transit DBE Program, and/or Port Authority of New York/New Jersey DBE Program.

101.24.3 DeIDOT. The Delaware Department of Transportation.

101.24.4 DeIDOT Supplemental Specifications. See Supplemental Specifications.

101.25.0 Department. Any reference to Department throughout the specifications shall mean Authority.

101.26.1 Differing Site Conditions. Subsurface or latent physical conditions encountered at the site that 1) differ materially from those indicated in the Contract, or 2) are unknown physical conditions of an unusual nature, differing materially from those conditions ordinarily encountered and generally recognized as inherent in the work provided for in the Contract.

101.26.2 Dispute. For purposes of Subsection 105.17, any claim, dispute or other matter in question.

101.26.3 Director. See Executive Director

101.27.0 District. Any reference to the District shall be the Authority.

101.28.0 District Engineer. Any reference to the District Engineer of the Authority shall mean the Engineer.

101.29.0 Easement. A right acquired by the Authority to use or control property for a designated purpose.

101.30.0 Embankment. A structure constructed of material as described in Standard Specifications Section 202, between the existing ground and sub-grade.

101.31.0 Engineer. The Chief Engineer of the Authority acting either directly or through a duly authorized representative.

101.32.1 Equipment. All machinery, tools, and apparatus, together with necessary supplies for upkeep and maintenance necessary for the construction and completion of the Project.

101.32.2 Executive Director (or Director). The Executive Director of the Authority, acting either directly or through a duly authorized representative.

101.33.0 Extra Work. Work not included in the Contract, but within the scope of the Contract and desired by the Authority for the satisfactory completion of the Project.

101.34.0 Falsework. Any temporary construction work used to support the weight of a permanent structural element until it becomes self-supporting. Falsework would include steel or timber beams, girders, columns, piles and foundations, and any proprietary equipment including modular shoring frames, post shores, and adjustable horizontal shoring.

101.35.0 Final Inspection. The inspection, conducted by the Engineer, to determine if the Project, or any substantial portion thereof, has been satisfactorily completed, in accordance with Contract requirements.

101.36.0 Force Account. Prescribed work paid on the basis of actual costs and appropriate additives.

101.37.0 Formwork. A temporary structure or mold used to retain the plastic or fluid concrete in its designated shape until it hardens. Formwork must have enough strength to resist the fluid

pressure exerted by plastic concrete and any additional fluid pressure effects generated by vibration.

101.38.1 General Notices. Federal and State regulations contained in the Contract Documents which govern Contract operations.

101.38.2 General Provisions. The Authority's Section 100 that is part of the Standard Specifications and replaces Section 100 of the most current edition of DelDOT Standard Specifications for Road and Bridge Construction.

101.39.0 Holidays. If any holiday falls on Sunday, the Monday following shall be the holiday. If any holiday falls on Saturday, the Friday preceding shall be the holiday.

The following days shall be recognized as holidays:

- New Year's Day
- Martin Luther King Jr. Day
- President's Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Friday after Thanksgiving Day
- Christmas Day

The holidays defined in this Article of the Standard Specifications are intended for use only in connection with normal work scheduling (Monday to Friday) and traffic protection requirements during this period.

101.40.0 Inspector. The authorized representative of the Authority assigned to perform inspection of work and materials.

101.41.1 Joint Venture Statement. A statement to be executed and signed by Contractors submitting a Bid where the Bidder is a joint venture between or among such Contractors.

101.42.0 Laboratory. A firm or individual selected by the Authority for the inspection and testing of the materials to be used in the Project.

101.43.0 Limits of Construction. An area with established boundaries, identified within the Right-of-Way or Easements, where the construction is permitted. When not specifically identified, limits of construction shall be the Right-of-Way and easement.

101.44.0 Liquidated Damages. An amount due and payable to the Authority by the Contractor for additional costs incurred by the Authority resulting from either the Bidder's failure to execute the Contract in accordance with Subsection 103.07, the Contractor's failure to complete the specified work within the Contract Time or as otherwise specified in the Contract Documents.

101.45.1 Lump Sum. The single price submittal by a Contractor as a single amount for a complete Contract item.

101.45.2 Maintenance Bond. The approved form of security furnished by the Contractor and the Contractor's Surety or Sureties to guarantee the Contractor's Work for a specified period of time.

101.46.1 Major Items and Minor Items. Any scheduled Pay Item of the Bid which amounts to more than fifteen percent (15%) of the Awarded Contract Value, based on the original quantity of that item multiplied by the unit price bid, is considered a Major Item. All other original Contract Items are considered Minor Items.

101.46.2 Manuals. The current manual entitled "Manual of Uniform Traffic Control Devices for Street and Highways" issued by the FHWA and the current "Traffic Control Manual for Streets and Highway Construction" published by DeIDOT.

101.47.0 Materials. Any substances, other than equipment, used in the construction of the Project.

101.48.1 MBE. A Minority-owned Business Enterprise certified by the Delaware Office of Management and Budget, Office of Supplier Diversity or the New Jersey Department of the Treasury.

101.48.2 Median. The portion of a divided highway separating the traveled ways for traffic in opposite directions.

101.48.3 Non-Collusion Affidavit. A form of affidavit disclaiming any collusion or other restraint on free, competitive bidding included in the Contract Documents.

101.49.0 Notice of Award. A written notice to the selected Bidder stating that the Bid has been accepted by the Authority and that the selected Bidder is required to execute the Contract Agreement and furnish bonds required by the Contract along with proof of insurance satisfactory to the Authority.

101.50.0 (Intentionally Omitted)

101.51.0 Notice to Proceed. Written notice to the Contractor to begin the Work. When applicable, the notice will include the starting date of Contract Time.

101.52.0 Pavement Structure. The combination of sub-base, base course, and surface course placed on a sub-grade to support the traffic load.

1. Base Course. The layer or layers of specified or selected material of designated thickness placed on a sub-base or a sub-grade to support a surface course.
2. Sub-base. One or more layers of specified material thickness placed on a sub-grade to support a base course (or in the case of rigid pavement, the Portland cement concrete slab).
3. Sub-grade. The top surface of the roadbed upon which the pavement structure is constructed.
4. Sub-grade Treatment. Modification of roadbed material by stabilization.

5. **Surface Course.** Layer(s) of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called the "Wearing Course".

101.53.0 Pay Item - See Contract Item.

101.54.0 Plans. The official plans, profiles, cross sections and any supplemental drawings or exact reproductions thereof furnished by the Authority, which show the location, character, dimensions and details of the work to be done.

101.55.0 Profile Grade. The trace of a vertical plane intersecting the top surface, usually along the longitudinal centerline of the surface course. Profile grade means elevation of such trace.

101.56.0 Project. The entire work to be performed under the Contract.

101.57.0 Project Resident. The field representative of the Engineer having direct supervision of the administration of the Contract.

101.58.0 Qualification Questionnaire. An Authority-approved form submitted as part of a Bid, on which various questions are asked by the Authority, the answers of which being used to determine the responsibility of a Bidder.

101.59.0 (Intentionally Omitted)

101.60.0 Responsive Bid. A Bid that complies with all terms, conditions, and requirements of the Contract Documents.

101.61.0 Responsible Bidder. A Bidder, as determined by the Authority, who possesses the financial, managerial, technical, and ethical capacity to perform successfully under the terms and conditions of a proposed Contract. In making Responsible Bidder determinations, the Authority may also consider all relevant factors, including but not limited to, a Bidder's past performance, experience, manpower, record of timely completion of projects, bonding capacity, record of M/W/DBE commitment achievement, past or current legal issues, or use of questionable subcontractors.

101.62.0 Right-of-Way. That property which is secured for, acquired by or possessed by the Authority for the Project.

101.63.0 Roadbed. The graded portion of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulders.

101.64.0 Roadside. The areas between the outside edges of the Shoulders and the Right-of-Way boundaries. Unpaved Median areas between inside Shoulders of divided highways and infield areas of interchange are included.

101.65.0 Roadside Development. Those items necessary for the preservation or replacement of landscape materials and features that may include suitable plantings and other improvements or ground cover to preserve and enhance the appearance and stability of the highway Right-of-Way or acquired easements for scenic improvements.

101.66.0 Roadway. The portion of a highway, including shoulders, for vehicular use. A divided highway has two or more Roadways.

101.67.0 Scaffolding. An elevated work platform used to support workers, materials, and equipment, but not intended to support the structure.

101.68.0 Schedule of Items. The list of Contract Items of Work in the Contract Documents on which Bidders submit their bid prices.

101.69.0 Schedule of Work. The approved base line schedule submitted by the Contractor containing dates of commencement and completion of the various items of Work within the Contract Time.

101.70.0 (Intentionally Omitted)

101.71.0 Section. When referring to the Specifications, a numbered article or group of related articles forming a part of the Specifications.

101.72.0 Shoulder. The portion of the Right-of-Way adjacent to the Traveled Way for accommodation of stopped vehicles for emergency use, and for lateral support of the pavement structure.

101.73.1 Sidewalk. That portion of the road primarily constructed for the use of pedestrians.

101.73.2 Special Provisions. Specific directions, provisions, or requirements particular to the Project under consideration, but not sufficiently covered by the Standard Specifications including:

Part I – Amendments to General Provisions of the Standard Specifications

Part II – Additional Specific Terms and Conditions (Additional General Provisions)

Part III – Amendments to Technical Specifications

Part IV - Additional Technical Specifications

Additional Parts – Additional Project Specific Specifications not covered above (as needed)

101.74.0 Specifications. The compilation of provisions and requirements for the performance of the prescribed work:

1. Standard Specifications.
2. Special Provisions.

101.75.1 Standard Construction Details (DeIDOT Standard Construction Details). Drawings of standard construction details which have been adopted by the Delaware Department of Transportation, current as of the date of the advertisement, for miscellaneous items of work and which are a part of the Contract Documents.

101.75.2 Standard Specifications. The Authority's General Provisions - Section 100 and Sections 200 through 800 of the Standard Specifications for Road and Bridge Construction, current edition, prepared by the Delaware Department of Transportation (DeIDOT Standard Specifications) along with the DeIDOT Supplemental Specifications for Division 200 through Division 800, current as of the date of the Advertisement for Bids, as published on the Delaware Department of Transportation's website.

101.76.0 State. Where reference is made to the State it shall be taken as the Authority.

101.77.0 Structures. Bridges, culverts, storm sewer appurtenances, slope and retaining walls, sign support structures, and other similar items.

101.78.0 Subcontractor. An individual or legal entity contracting with the Contractor, with the approval of the Authority, to perform any part of an item of work of the Contractor's Contract with the Authority.

Exceptions to this definition are suppliers limited to delivering and depositing, but not incorporating material, suppliers of services that transport material, and persons or entities performing work which does not advance the completion of the Contract and is not considered as an item of Work.

All references to Subcontractors in the Contract shall apply equally to all subcontractors at any tier.

101.79.0 (Intentionally Omitted)

101.80.0 Substructure, Bridge. All of the structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, including backwalls, and wingwalls.

101.81.0 Superintendent. The Contractor's authorized representative in responsible charge of the Work.

101.82.0 Superstructure, Bridge. Approach slabs and the entire structure except the Substructure.

101.83.1 Supplemental Agreement. A written agreement made and entered into by and between the Contractor and the Authority, covering work not otherwise provided for, or revisions in or amendments to the original terms of the Contract.

101.83.2 Supplemental Specifications (DelDOT Supplemental Specifications). Approved DelDOT additions and revisions to Sections 200 through 800 of the Standard Specifications for Road and Bridge Construction, current edition, prepared by the Delaware Department of Transportation (DelDOT Standard Specifications), which are current as of the date of the Advertisement for Bids and which are part of the Contract Documents.

101.83.3 Supplier. Any individual, firm or corporation who contracts with the Contractor to manufacture, supply or sell Materials, or Equipment for the Contract, for or on behalf of the Contractor.

101.84.0 Surety. When applying to the Bid Guaranty, it refers to the corporate body which engages to be responsible in the execution of a satisfactory Contract by the Bidder. When applying to the Contract Bond, it refers to the corporate body which is bound with and for the Contractor and which contracts responsibility for the Contractor's acceptable performance of the Project and for the payment of all obligations pertaining thereto.

101.85.1 (Intentionally Omitted)

101.85.2 Total Price. The total amount bid, including Alternate Pay Items, if any, for any project.

101.86.1 Traveled Way. The portion of the Right-of-Way designated for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

101.86.2 TWIC. Transportation Worker Information Credentials

101.87.0 Unbalanced Bid, Materially. A Bid that generates a reasonable doubt that award to the Bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Authority.

101.88.0 Unbalanced Bid, Mathematically. A Bid containing Contract Items that do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs.

101.89.1 Unit Price. The price provided by the Contractor in the Bid for one (1) unit of a Contract Item.

101.89.2 VEP. Value Engineering Proposal.

101.89.3 Vice-Chairperson. The Vice-Chairperson of the Authority, acting either directly or through a duly authorized representative.

101.89.4 WBE. A Woman-owned Business Enterprise certified by the Delaware Office of Management and Budget, Office of Supplier Diversity; or the New Jersey Department of the Treasury.

101.90.0 Work. The furnishing of all labor, Materials, Equipment, and other incidentals necessary to complete the Contract.

101.91.0 (Intentionally Omitted)

101.92 Working Drawings. Stress sheets, shop drawings, erection plans, false-work plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which the Contractor is required to submit to the Engineer for approval.

Section 102 - Bidding Requirements and Conditions

102.01 Qualification of Bidders

102.02 Contents of Bid

102.03 Advertisement for Bid

102.04 Interpretation of Quantities in Bid Forms

102.05 Examination of Plans, Specifications, Contract Documents, and Site of Work

102.06 Preparation of Bid

102.07 Irregular Bids

102.08 Bid Guaranty

102.09 Delivery of Bids

102.10 Withdrawal of Bids

102.11 Opening of Bids

102.12 Disqualification of Bidders

102.13 Rejection of Bid

102.14 Materials Guaranty

102.15 Non-Collusion Certification

102.16 Online System Failure

102.01 Qualification of Bidders. Each Bidder will be required to complete and execute the Qualification Questionnaire included with the Contract Documents attesting to his, her or its financial ability, adequacy of Equipment, organization, prior experience and other matters. Other pertinent data relating to the Bidder's qualifications may also be attached to the Qualification Questionnaire to supplement the information given thereon. Failure to submit the executed Qualification Questionnaire together with the Contract Documents at the time of bidding shall be just cause for rejection of the Bid.

If a group of contractors submit a single bid for a Contract, acting under the terms of a joint venture, each such contractor shall complete and execute a separate Qualification Questionnaire and shall also execute their portion of a Joint Venture Statement. If a Joint Venture Statement form is not included with the Contract Documents issued by the Authority, Bidders wishing to enter into a joint venture for the Project shall secure a copy of this form from the Authority for execution and attachment to the Bid. Failure of joint Bidders to include the executed statement with their Bid shall also be just cause for rejection of the Bid.

102.02 Contents of Bid. The Bid will state the location and description of the contemplated construction, show the estimate of the various Pay Item quantities, and show the kinds of Work to be performed and/or Materials to be furnished. A schedule of items for which Unit Prices are invited will be included along with the specified time in which the Work must be completed, amount of the Bid Guaranty, and the date, time, and place of the opening of Bids. If the method of Bid comparison to be utilized by the Authority is to be something other than comparing the Base Bids of all Bidders, an alternative Bid comparison basis will be defined in the Contract Documents. The Contract Documents will also include or designate any Special Provisions and any other specifications or requirements that vary from or are not contained in the Standard Specifications.

All papers bound with, attached to or otherwise submitted with the Bid are considered as part of the Bid. The Plans, Specifications, and other documents designated in the Contract Documents will be considered a part of the Bid whether attached or not.

102.03 Advertisement for Bid. The Authority reserves the right to refuse to accept a Bid from a Bidder for any of the reasons stated in Subsection 102.12.

In accordance with the Advertisement for Bids, Bids are invited to be submitted for the performance of the Project, the designation of which is stated in the Advertisement for Bids.

The Authority will consider only those Bids received from parties who have obtained Contract Documents directly from the Authority. Contract Documents are not transferable to other parties for bidding purposes. Bids received from firms whose names are not recorded by the Authority as having secured Contract Documents for this Contract will be rejected.

Bids are requested on the items stated in the Contract Documents for the Project. The prices bid shall cover all costs of any nature, incidental to and growing out of the Work, including labor, Material, Equipment, transportation and all else necessary to perform and complete the Project in the manner and within the time required, all incidental expenses in connection therewith, all costs of account of loss by damage or destruction of the Project and any additional expenses for unforeseen difficulties encountered, for settlement of damages and for replacement of defective Work and Materials. No separate or additional payment will be made for any Materials furnished, Work performed, services provided or other expense incurred in complying with the requirements of the Standard Specifications and any Special Provisions unless otherwise specifically provided.

102.04 Interpretation of Quantities in Bid Forms. The quantities appearing in the Bid Forms are estimates used for the bid comparison. Payment to the Contractor will only be made for the actual quantities of authorized Work performed and accepted, or for Materials furnished in accordance with the Contract.

102.05 Examination of Plans, Specifications, Contract Documents, and Site of Work. It shall be the responsibility of the Bidder to examine the work site to assure himself, herself or itself of the degree of work to be completed, the conditions, including subsurface conditions, of the site and all Work required by the Contract. The Bidder warrants that, before submitting his, her or its Bid, the Bidder is familiar with the Plans and Specifications and other documents that form part of the Contract, that the Bidder investigated in detail the site of the Project and the available means of access and that the Bidder made such examination thereof as necessary to satisfy himself, herself or itself, in regard to the character and amount of Work involved. The Bidder also warrants that he, she or it can secure the necessary labor and Equipment and that the Materials he, she or it proposes to use will conform to the requirements therefor and can be obtained by he, she or it in the quantities and at the times required. The submission of a Bid shall be considered conclusive evidence that the Bidder has made examination of the aforementioned conditions.

It is the obligation of the Bidder to ascertain all the facts concerning conditions to be found at the location of the Project including all physical characteristics above, on and below the surface of the ground, to fully examine the Plans and Specifications, to consider fully these and all other matters which can in any way affect the Work under the Contract, and to make the necessary investigations relating thereto, and to agree to this obligation in the signing of the Contract. In ascertaining the conditions of the Work preparatory to submitting Bids, Bidders shall also familiarize themselves with the conditions of the site as well as its effect on maintenance of traffic and control of Work, and any other pertinent characteristics of the site or operation that may affect their Work. The Authority assumes no responsibility whatsoever with respect to ascertaining for the Contractor such facts concerning physical characteristics at the site of the Project. The Contractor agrees that he, she or it will make no claim for additional payment or extension of time for completion of the Work or any other concession because of any misinterpretation or misunderstanding of the Contract, on his, her or its part, or of any failure to fully acquaint himself, herself or itself with all conditions relating to the Work.

Bidders must make a request, in writing, to the Authority for any interpretation or any item designated in the Contract Documents or correction of any apparent ambiguity, inconsistency or error that may be found in the Contract Documents, no less than six (6) business days prior to the Bid opening date. Interpretations or explanations made by the Authority in response to such requests will be issued as an Addendum and shall become part of the Contract Documents and will be provided to all prospective Bidders in writing before the time set for opening of the Bids. Only the interpretation or correction issued by the Authority by Addendum shall be binding. Prospective Bidders are advised that no other source is authorized to give information concerning or to explain or interpret the Contract Documents. If a Bidder, prior to the submission of his, her or its Bid, fails to call the Authority's attention to the existence of an apparent ambiguity, inconsistency or error in the Contract Documents, that Bidder's Bid will be conclusively presumed to have been based upon the interpretation of such ambiguity or inconsistency or directions correcting such error which may subsequently be given by the Authority.

Before submitting his, her or its Bid, the Bidder shall ascertain from the Authority the status of Right-of-Way acquisitions, if any, and shall ascertain the provisions of agreements between the

Authority and property owners that may relate to the Bidder's Bid or to the Work to be performed. The Contractor shall also confer with the Authority on the above-mentioned matter immediately after award of the Contract and at such other times thereafter as may be necessary or advisable. The Contractor shall be governed by the provisions of the above-mentioned Right-of-Way agreements.

It is the obligation of the Bidder to make his, her or its own investigation of subsurface conditions prior to submitting a Bid. Borings, test excavations and other subsurface investigations, if any, made prior to the construction of the Project, the records of which will be made available to Bidders, are intended for use as a guide for design. Said borings, test excavations and other subsurface investigations are provided for informational purposes only and are not warranted to show the actual subsurface conditions. The Contractor agrees that he, she or it will make no claims against the Authority if in carrying out the Project the Contractor finds that the actual conditions encountered do not conform to those indicated by said borings, test excavations and other subsurface investigations.

Any estimate or estimates of quantities shown on the Plans or in the Bid Forms, based on said borings, test excavations and other subsurface investigations, are in no way warranted to indicate the true quantities. The Contractor agrees that they will make no claims against the Authority, if the actual quantity or quantities do not conform to the estimated quantity or quantities, except when compensation therefor is justified in accordance with Subsection 104.05.

The Authority will not be bound by any statement or representation concerning conditions or descriptions of the Work unless they are included or designated in the Contract Documents. Oral explanations or instructions given before the bid of the Contract by Authority employees or agents will not be binding.

102.06 Preparation of Bid. Bids shall be submitted on the Bid Forms furnished by the Authority, properly filled out in ink and shall be duly executed. The Bidder shall state in the Bid the price per unit of measure or lump sum price for each scheduled item of work for which the Bidder will agree to carry out the Work. Unless expressly stated otherwise by the Authority, prices shall be given by the Bidder for all scheduled items of work listed on the Bid Forms. The Bidder shall also state the Base Bid and the Total Price Bid (if applicable) for the performance of the Project, as determined by multiplying each estimated quantity by the price per unit of measure bid therefor and adding together the resulting amounts and any lump sum prices required. For the purpose of comparison of bids received, the Base Bid, correctly computed, stated in the Bid will be considered to be the amount bid for the Project and shall serve as the basis of Bid comparison for award.

Where there is a discrepancy in any item between the unit or lump sum price written in figures and that written in words, the written words will govern.

If, during the tabulation of bids, the price on any Bid is found to be incorrectly computed, the Authority reserves the right to make such changes as are necessary in the extended amounts and price on the basis of the unit and lump sum prices given and the approximate quantities stated for the scheduled items therein.

When the Bid is made by an individual, his post office address shall be stated and the individual shall sign the Bid; when made by a legal entity, its full legal name and post office address shall be stated and the Bid shall be signed by a duly authorized representative of such legal entity, with corporate seal affixed and signatures notarized in all cases. Before the Contract will be executed

with a successful Bidder not a resident of the State or one of the States in which the work is to be done, such Bidder shall designate a proper agent(s) in the non-residing state or states on whom service of process can be made in the event of litigation.

As stated in Subsection 102.01, any group of Bidders wishing to submit a single Bid as part of a joint venture will be required to complete and execute the joint venture statement included with the Contract Documents.

Any Bidder submitting a Bid for a contract must also submit Bids for each portion of the Work.

102.07 Irregular Bids. Bids shall be considered irregular and may be rejected for the following reasons:

- (a) If the Contract Documents furnished by the Authority are not used or are altered.
- (b) If there are unauthorized additions, omissions, limitations, provisos, alterations, conditions, alternate bids not called for, or irregularities of any kind which may tend to make the Bid incomplete, indefinite or ambiguous as to its meaning.
- (c) If the prices contained in the Bid are obviously unbalanced, either in excess of or below the reasonable cost analysis values.
- (d) If the Bid fails to contain a unit or lump sum price for every Pay Item indicated except in the case of authorized optional Alternate Pay Items.
- (e) If any documents necessary for bidding purposes are not completed, are improperly executed or are missing (including both forms of the Bid Guaranty) or if the Bid is submitted by Bidders whose names are not recorded by the Authority as having secured Contract Documents for the Contract.
- (f) If the Authority, in its sole discretion, deems it advisable to do so in its best interest.
- (g) If specific MBE/WBE/DBE information regarding the good-faith effort documentation and written assurances that the MBE/WBE/DBE goals set forth in the Contract Documents will be met is required, but is not provided at the time of bid.

The Authority reserves the right to waive any or all irregularities and technicalities in the submission of Bids, including the Bid Guaranty.

102.08 Bid Guaranty. The Bid, when submitted, unless otherwise noted in the Special Provisions, shall be accompanied by two forms of Bid Guaranty as follows:

- (a) A cashier's check, made payable to "The Delaware River and Bay Authority", in the sum of not less than one percent (1%) of the Total Price, except that the amount of the check need not exceed \$20,000 and shall not be less than \$2,000; and
- (b) A Bid Bond, on the form to be furnished by the Authority and included in the Contract Documents, for a sum of not less than ten percent (10%) of the Total Price.

Cashier's checks submitted as part of the bid guaranty will be returned to all unsuccessful Bidders within fourteen (14) Days following the bid opening.

102.09 Delivery of Bids. Bidders may submit the numerical portion of the Bid electronically using the Authority's online project management system or may incorporate a hard copy of the numerical portion of the Bid, along with all of the other required forms as provided by the Authority. In addition to the numerical portion of the Bid (whether submitted electronically or via hard copy), all Bidders must submit Bids upon complete forms as provided by the Authority, including the signed Bid, Consent of Surety, Non-Collusion Affidavit, Joint Venture Statement (if applicable) and Bid Bond.

Each Bidder must also complete and execute a Qualification Questionnaire, included with the Contract Documents, in which he, she or it shall give information relating to his, her or its prior experience and performance records and the size and capacity of the organization. Subcontractors performing twenty percent (20%) or more of the total value of the Work must also submit a Qualification Questionnaire on the approved Authority form. Bids will be accepted at the place and until the time stated in the Advertisement for Bids. Mailed Bids shall be sent according to the directions stated in the Contract Documents and must be received by the Authority prior to the time set for opening Bids, if they are to be considered.

The Consent of Surety shall assure that satisfactory arrangements have been made between the Surety and the Bidder by which the Surety agrees to furnish the Bidder with a Contract Bond (Performance and Payment) and a Maintenance Bond in the form required. A Maintenance Bond shall be furnished at the conclusion of the Work. The Consent of Surety shall be executed by an approved surety company authorized to do business in the States of Delaware and/or New Jersey, as the location of the work dictates.

Bidders must submit their complete Bid (other than their numerical bid if submitted on-line) in a sealed envelope. The Bid must be printed as one-sided documents. Two-sided documents shall not be permitted. The envelope containing the Bid must bear the name and address of the Bidder along with the designation of the Project as named in the Contract Documents.

If the Bidder has submitted its numerical bid via the Authority's on-line procurement system the envelope shall also be marked: "NUMERICAL BID SUBMITTED ONLINE." If the Bidder has submitted the numerical portion of his, her or its Bid both online and in hard copy format, the hard copy shall supersede the online submission unless the hard copy version has been specifically withdrawn by the Bidder in accordance with Subsection 102.10.

102.10 Withdrawal of Bids. A Bid, after having been submitted, may be withdrawn by the Bidder prior to the opening of any bid on that Project upon immediate execution by such Bidder of the appropriate withdrawal form furnished by the Authority.

102.11 Opening of Bids. Bids will be opened and read at the place designated by the Authority on the date and hour set in the Contract Documents and is open to all who wish to attend in person. Bids received after the time set for the Opening of Bids will not be considered to be a Responsive Bid.

102.12 Disqualification of Bidders. Any one or more of the following causes shall be considered as sufficient for the disqualification of a Bidder and the rejection of a Bid or Bids.

- (a) The Bidder is not properly qualified, in the sole opinion of the Authority, to undertake the Project, based on the information given in the Qualification Questionnaire and/or

any other information available to the Authority relative to the qualifications of the Bidder.

- (b) More than one Bid for the same work from an individual or legal entity under the same or different names.
- (c) Evidence of collusion among Bidders. Participants in such collusion will not be considered for future Bids until re-qualified by the Authority.
- (d) Unsatisfactory performance record as shown by past work for the Authority, judged from the standpoint of workmanship and progress.
- (e) Uncompleted work which, in the judgment of the Authority, might hinder or prevent the prompt completion of additional work if awarded.
- (f) Failure to pay or satisfactorily settle all bills due for labor and material on former contracts in force at the time of letting.
- (g) The Bidder has failed to execute a contract following Award as set forth in Subsection 103.07 or has defaulted on previous contract(s).

102.13 Rejection of Bid. Refer to Subsections 102.07 and 102.12.

102.14 Materials Guaranty. Before the Contract is awarded, the successful Bidder may be required, upon specific request by the Authority, to furnish a complete statement of the origin, composition and manufacture of any or all of the Materials to be used in the Contract, together with such samples as may be requested by the Authority for the purpose of advance testing.

102.15 Non-Collusion Certification. Every Bid submitted to the Authority shall contain a fully executed Delaware River and Bay Authority Non-Collusion Affidavit as provided in the Contract Documents.

102.16 Online System Failure. In the event that that the Authority's online project management system experiences a system failure up to one hour before the scheduled opening of Bids as referenced in Subsection 102.11, the Authority, in its' sole discretion reserves the right to postpone and reschedule the opening of Bids. This Subsection shall not apply to computer or other electronic system failures or other technical issues produced or caused by a Bidder's equipment, software or hardware.

Section 103 - Award and Execution of Contract

103.01 Consideration of Bids

103.02 Award of Contract

103.03 Cancellation of Award

103.04 Return of Bid Guaranty

103.05 Contract Performance and
Payment Bonds

103.06 Execution and Approval of Contract

103.07 Failure to Execute Contract

103.08 Escrow of Bid Documentation

103.09 Withdrawal of Bid

103.10 Insurance

103.01 Consideration of Bids. After the Bids are opened and read, the Authority will compare the Bids on the basis of the summation of the products of the quantities and the Unit Prices unless otherwise defined in the Contract Documents. The tabulation of bids received and the decision of Award, if made, will be available to the public. In the event of a discrepancy between Unit Prices and extensions, the Unit Price shall govern. The Authority reserves the right to reject any or all Bids, waive irregularities on technicalities, proceed to do the work otherwise, abandon the work or advertise for new Bids, if in the judgment of the Authority its best interests be will promoted thereby. Unit Prices may also be affected by maximum price provisions noted elsewhere in these Specifications.

103.02 Award of Contract. The Contract will be awarded or all bids rejected within one hundred twenty (120) Calendar Days from the date of opening Bids. By mutual consent, the Authority and the lowest Responsible Bidder can agree to extend the time within which the Authority may make an Award.

Unless the Bid is rejected pursuant to Subsection 102.07 or the Bidder is disqualified pursuant to Subsection 102.12, Award will be to the Responsible Bidder who submits the lowest Responsive Bid. The award will be made to the Responsible Bidder with the lowest Base Bid.

The Award shall not be binding upon the Authority until the Contract has been executed by the Chairperson, Vice-Chairperson and Executive Director, nor shall any Work be performed on account of the proposed Contract until such execution.

103.03 Cancellation of Award. The Authority reserves the right to cancel the Award of any contract before final execution without liability.

103.04 Return of Bid Guaranty. The Bid Guaranties of all but the Responsible Bidder submitting the lowest Responsive Bid will be returned within fourteen (14) Days of the Bid opening. The Bid Guaranty of the Responsible Bidder submitting the lowest Responsive Bid will be returned when the Contract has been executed by the Authority, or, if not executed, when other disposition of the matter shall have been made by the Authority, except that in the event the award of Contract is annulled because the Bidder to whom the award is made fails to execute and have delivered on time the Contract and other prescribed documents, the cashier's check of such Bidder shall be forfeited and his, her or its Bid Bond shall become operative, as provided in Subsection 103.07.

103.05 Contract Performance and Payment Bonds. Within ten (10) Days of the date of official notice of Award of the Contract, the Bidder to whom the Contract is awarded shall furnish and deliver a Contract Bond, on the form furnished by the Authority, in the sum not less than the cost of the Base Bid for the Project plus any Alternate Pay Items that the Authority elects to include in the Contract.

The Surety shall be acceptable to the Authority and legally authorized to do business in the States of Delaware and/or New Jersey, as the location of the work dictates. In the event of insolvency of the Surety, the Contractor shall forthwith furnish and maintain another Surety satisfactory to the Authority.

In the event it is necessary for more than one Surety to underwrite the total required amount of the Contract Bond, the bond form shall be amended to indicate to what maximum amount each Surety is liable, and to state that in the event the Authority must proceed against the Sureties for

the completion of the work, each Surety will be liable for an amount proportionate to his, her or its maximum liability.

The Contract Bond shall be maintained in effect by the Contractor and Surety until the Project is finally accepted by the Authority and the final payment to the Contractor is made.

103.06 Execution and Approval of Contract. Within ten (10) Days of the date of official notice of Award of the Contract, the Bidder to whom the Contract is awarded shall deliver the following documents to the Authority:

- (a) The executed Contract Agreement;
- (b) The Contract Bond, as prescribed in Subsection 103.05;
- (c) Proof satisfactory to the Authority, of the authority of the person or persons executing the Contract Agreement and Contract Bond on behalf of the Contractor; and
- (d) Satisfactory evidence of all insurance coverage, as prescribed in Subsection 103.10 and the Special Provisions.

Each of the documents listed above shall be furnished in the number of copies requested by the Authority.

The Contract will not be considered effective until it has been fully executed by all parties to the Contract.

103.07 Failure to Execute Contract. Failure upon the part of the Bidder to whom the Contract has been awarded to execute and deliver the Contract Agreement and all other documents listed in Subsection 103.06 in the manner and within the time prescribed therein shall be just cause for annulment of the Award and for the exclusion of the Bidder from bidding on subsequent projects for such period as the Authority may deem appropriate.

It is understood and agreed by said Bidder that if the Award is annulled for the above reasons, the Bid Guaranty, as described in Subsection 102.08, shall become the property of the Authority, not as a penalty but as Liquidated Damages and that the Authority may proceed to recover under the terms and provisions of the Bid Bond, at the discretion of the Chairperson.

103.08 Escrow of Bid Documentation. For the Award of a Project equal to or greater than Twenty Million Dollars (\$20,000,000) in value, or if required by the Specifications, the Contractor shall submit to the Authority legible copies of the Bid Documentation.

Scope and Purpose. The purpose of escrowing the Bid Documentation is to preserve the Contractor's bid documents for use by the Contractor and the Authority in the resolution of any disputes, claims, arbitration proceeding, or litigation arising from the Contract. The submitted Bid Documentation shall be placed in escrow with a banking institution or other bonded document storage facility selected by the Authority and preserved by that institution as specified in the following subparts:

A. **Submittal and Return of Bid Documentation.** Within twenty-four (24) hours of the execution of the Contract, the Contractor shall submit the Bid Documentation in a sealed container as per the custody agreement form. The container shall be clearly marked "Bid Documentation" and shall show on the face of the container the Contractor's name and address, the date of submittal, the Contract number, and the Project designation.

B. **Affidavit.** In addition to the Bid Documentation, the Contractor shall submit an affidavit, signed under oath by a representative of the Contractor authorized to execute Bids, listing each bid document submitted by author, date, nature, and subject matter. The affidavit shall attest that 1) the affiant has personally examined the Bid Documentation, 2) the affidavit lists all of the documents relied upon by the Contractor in preparing its Bid for the Project, and 3) all such Bid Documentation is included in the sealed container submitted to the Authority.

C. **Duration and Use.** The Authority and the Contractor will jointly deliver the sealed container and affidavit to a banking institution or other bonded document storage facility selected by the Authority for placement in a safety deposit box, vault or other secure accommodation. The document depository agreement shall reflect that the Bid Documentation and affidavit will remain in escrow during the life of the Contract or until the Contractor and the Authority jointly agree to remove such Bid Documentation, or the Contractor notifies the Authority of its intention to initiate a claim against the Authority related to the Contract. Notification of the Contractor's intention to initiate a claim against the Authority will be sufficient grounds for the Authority to obtain the release and custody of the Bid Documentation. If the Bid Documentation is not removed from escrow, upon completion of the Contract and provided that the Contractor has signed the final standard release form, the Authority will instruct the document depository to release the sealed container to the Contractor. In accordance with the Contractor's representation that the sealed container placed in escrow contains all of the materials relied upon in preparing its Bid, the Contractor agrees to waive the right to use any bid documentation other than that placed in escrow to resolve all disputes arising out of the Contract.

D. **Refusal or Failure to Provide Bid Documentation.** Failure to provide Bid Documentation will render the Bid non-responsive, and the Bid Guaranty will be forfeited in accordance with Subsection 103.07.

E. **Confidentiality of Bid Documentation.** The Bid Documentation and affidavit in escrow are, and will remain, the property of the Contractor. The Authority has no interest in, or right to, the Bid Documentation unless mutually agreed by the Contractor and the Authority or upon notification of the intention to file claim is received between the Authority and Contractor. In the event of such notification, the Bid Documentation and affidavit shall become the property of the Authority until complete resolution of the claim is achieved. These materials, and all copies made by the Authority, shall be returned to the Contractor upon execution of a final release. The Authority shall make every reasonable effort to ensure that the Bid Documentation it has gained access to will remain confidential within the Authority and will not be made available to anyone outside the Authority or used by a former Authority employee.

F. **Cost and Escrow Instructions.** The cost of the storage of the Bid Documentation will be borne by the Authority. The Authority will provide escrow instructions to the document depository consistent with this clause.

G. **Payment.** There will be no separate payment for the cost of compilation of data, the sealed container, or verification of the Bid Documentation. All costs shall be included in the Bid price.

103.09 Withdrawal of Bid. If, at any time, after the acceptance of bids by the Authority and before full execution of the Contract the Responsible Bidder with the lowest Responsive Bid determines a need to withdraw his, her or its bid, he, she or it shall put the request in writing to the Authority representative stating the reason(s) for such withdrawal. The Authority reserves the right to accept or reject the Bidder's request to withdraw upon review of the merits. The Authority reserves the right to retain the Bid Guaranty in full or in part as Liquidated Damages.

The Authority may then proceed to the next lowest Responsive Bid, or reject all Bids and re-advertise for new Bids.

103.10 Insurance. The Bidder to whom the Contract is awarded will be required to provide insurance of the prescribed types and minimum amounts as set forth in the Special Provisions of the Contract Documents to provide adequate protection for the various parties involved in the Contract. To the extent permitted by law, all policies are to have a waiver of subrogation in favor of the Authority.

Within ten (10) Days after the date of official notice of Award of the Contract, the Contractor shall furnish to the Authority insurance certificates for all the insurance required under the Contract and subrogation waivers related thereto. Thereafter, renewal certificates of insurance shall be deposited with the Authority not less than ten (10) Days before the expiration dates of the related policies. The Contractor also agrees to provide the Authority with current certificates of insurance every six (6) months during the term of the Contract. Notwithstanding the foregoing, the Authority reserves the right to request evidence of insurance at such additional intervals as it determines in its sole discretion. In the event of cancellation or termination (whether by the insurer or the Contractor) of such policy(ies) or in the event the coverage thereof is altered below the limits required by the Contract, Contractor shall provide the Authority with ten (10) Days prior written notice of such expiration, termination or alteration. In addition, the Contractor shall procure new or additional insurance, as applicable, satisfying the requirements set forth in the Special Provisions and shall supply the Authority with certificates of insurance for such new or additional insurance not less than five (5) Business Days before the expiration, termination or alteration of the prior policy(ies).

All required insurance shall be maintained with insurance carriers licensed or approved to do business in the states of New Jersey or Delaware, as required by the location of the Project, or as otherwise approved by the Authority. All companies are to be rated by Best's at least A-VIII, unless otherwise approved by the Authority.

Neither approval by the Authority nor a failure to disapprove insurance certificates furnished by the Contractor shall release the Contractor from full responsibility for all liability as set forth in the indemnification clause stated in Subsection 107.10.

The Contractor is responsible for any loss or damage to the Work from any cause whatsoever, until final acceptance by the Authority. If the Contractor has any property insurance covering the Work, the policy is to include a waiver of subrogation in favor of the Authority, and the Authority is to be named loss payee. The Contractor is responsible for any deductible, and holds the Authority harmless for any deductible. If the Contractor is self-insured, the Contractor will not claim against the Authority for any loss or damage.

If Coverage is on a "claims made" form, the retro date must be prior to or concurrent with the date of execution of the Contract; and certification must continue for at least one year after termination or expiration of the Contract.

Section 104 - Scope of Work

- 104.01** Intent of Contract
- 104.02** Signs
- 104.03** Bus Stops
- 104.04** Accident Notification
- 104.05** Changes in the Character of Work
- 104.06** Differing Site Conditions
- 104.07** Suspension of Work/Annulment of Contract
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- 104.09** Maintenance and Protection of Traffic
- 104.10** Rights In and Use of Materials Found on the Work
- 104.11** Restoration of Surfaces Opened by Approval
- 104.12** Value Engineering Proposals (VEP) by the Contractor
- 104.13** Final Cleaning of Project Site
- 104.14** Contractor's Responsibility for Work

104.01 Intent of Contract. The Work required of the Contractor comprises the performance and completion of the Project, including the furnishing of all Materials, Equipment, transportation, labor and all else necessary therefor and incidental thereto, final cleaning up as provided in Subsection 104.13, the payment of all due obligations as provided in Subsection 109.10 and the replacement of defective Work and Materials as provided in Subsection 105.20, all in accordance with the Contract or as ordered by the Authority.

The Plans forming a part of the Contract Documents show the location, general character, limits, dimensions and details of the Work to be performed under the Contract.

The title sheet of the Plans for each Contract bears the designation "Delaware River and Bay Authority," the Contract number and the title of the Project.

The Plans and Specifications for each Contract are intended to fully prescribe the Work to be done, the Materials to be furnished, the manner of accomplishing the Work, the time within which the Work is to be completed and the means of payment to the Contractor.

The Plans and Specifications are further intended to complement and supplement each other. Any Work required by either one shall be performed. Should any Work be required which is not denoted in the Specifications or on the Plans but which is nevertheless necessary for the proper performance of the Project, such Work shall be performed as fully as if it were described and delineated.

If any discrepancy is found on the Plans between a figured dimension and a scaled dimension, the figured dimension shall govern. The Authority shall have the right to correct apparent errors or omissions in the Plans and Specifications and to make such interpretations as deemed necessary for the proper fulfillment of the intent of the Contract.

Within ten (10) Days after the execution of the Contract, the Authority will furnish to the Contractor, without charge, five (5) copies of the Special Provisions and five (5) sets of prints of the Plans.

At least one (1) complete set of the Plans and Specifications (including Standard Specifications) shall be kept at all times at the site of the Project by the Contractor.

104.02 Signs. The Contractor shall, with the Authority, inventory all signs (e.g., traffic, bus stops, street names, etc.) within the limits of the Contract. Necessary bus stops and traffic signs shall be maintained in operation during construction, and all other signs shall be properly stored. The Contractor is responsible for any loss or damage to signs.

104.03 Bus Stops. Bus stops shall be maintained as close as possible to the original location by use of temporary roadway materials during construction activity.

104.04 Accident Notification. The Contractor shall immediately notify the Authority Police of any accident at (302) 571-6342 or (302) 571-6343. Subsequent to notification of the Authority police, the Contractor shall notify the Chief Engineer.

104.05 Changes in the Character of Work. The Authority reserves the right to, at any time prior to the completion of the Contract, issue plan revisions, make adjustments in Contract

Item quantities, or make such other alterations considered necessary to satisfactorily complete the Contract. This change shall be accomplished by a written Change Order, and will not require the Authority's notice to the Surety. The Contractor will be required to comply with such changes upon receipt of the Change Order. If the Contractor should refuse to accept such Change Order, the Contractor may be declared in default as provided in Subsection 108.10.

Such changes do not invalidate the Contract or release the Surety.

If, as a result of such changes, the Contractor requires additional time to complete the Contract, adjustments in the Contract Time will be made under Subsection 108.07.

Payment for changes will be made as provided in Subsections 109.03 or 109.04. Payment shall exclude any amount for loss of anticipated profits, or consequential losses alleged to result from the change.

When such changes result in increases or decreases in the quantities of Contract items scheduled in the Bid, payment for the revised quantities of work actually done will be made solely at the established Unit Prices for such items, except as provided below:

- (a) When such change results in an increase or decrease of twenty-five percent (25%) in the actual Project cost compared to the Awarded Contract Value of the Project, only the price for those individual Pay Items whose quantities have increased or decreased by more than twenty five percent (25%) will be eligible for price negotiation. If the total cost of the Project is increased twenty-five percent (25%) or more, for each Pay Item whose quantity has increased by more than twenty-five percent (25%), only the quantity in excess of one hundred twenty-five percent (125%) of the original Bid quantity will be subject to the negotiated price. If the total cost of the Project is decreased twenty-five percent (25%) or more, each Pay Item whose quantity has decreased by twenty-five percent (25%) or more, the entire actual Pay Item quantity will be subject to the negotiated price.
- (b) When any such change results in an increase or decrease of more than 25% in the actual quantity of any Major Item, as defined in Subsection 101.46.1 of the General Provisions, then the Contract price for the Major Item will be eligible for price negotiation. If the change is an increase, only the quantity of that Major Item in excess of 125% of the original Bid quantity will be subject to the negotiated price. If the change is a decrease, the entire actual quantity of that Major Item will be subject to the negotiated price.

Supplemental Agreements between the Authority and the Contractor will be required to cover the mutually agreed upon terms of all such price negotiations.

When changes involve the addition of Work of a different character than that prescribed under any of the original items scheduled in the Contract or involve Work of a similar character but under conditions substantially different than those contemplated for the original items, payment for such additional Work will be made on the basis of a negotiated price or prices and the mutually agreed upon terms of such negotiations shall be included in a Supplemental Agreement.

Change Orders and/or Supplemental Agreements may also include appropriate changes in the terms of the Contract such as extensions of time, if authorized. Supplemental Agreements may also include all necessary specifications and/or drawings that may be necessary to cover the additional work.

If negotiation proves unsuccessful and payment for the Work cannot be agreed upon by the Contractor and the Authority prior to starting such Work, the Authority may direct the Contractor to perform the Work under the Force Account provisions of Subsection 109.04. The Contractor will proceed immediately with the Work. Such direction shall neither invalidate the Contract nor release the Surety, but Work shall go forward and shall not be held up, or delayed, as a result of such price negotiations.

The elimination of any Minor Item will not be considered as a basis for a claim for additional payment for anticipated profits, except for such actual Work as may have been done and Materials actually purchased with the permission of the Authority prior to notification of the elimination of the item. The omission of any Major Item will be subject to the conditions of negotiation as outlined above.

Unless otherwise set forth herein, Work shall not proceed on any portion of the Project affected by a proposed change by the Authority, after the Contractor is advised of such change, until a Change Order is issued by the Authority. If the change is to be accompanied by a Supplemental Agreement, the Supplemental Agreement shall be executed by both parties and the Surety notified of the change before the affected Work shall proceed. The requirements of this paragraph may be waived if, in the opinion of the Authority, the circumstances are of such emergency or other critical nature that it would be impractical or more expensive to delay action until formal approval by the Authority; in such event, the Authority may authorize the change verbally, subject to subsequent written confirmation by a Change Order and, if necessary, a Supplemental Agreement at a later date.

Changes in the extent of Work shall not operate as a waiver of any conditions of the Contract not specifically stated in the Change Order and/or Supplemental Agreement.

If, in the opinion of the Authority, the proposed increases in or additions to the original scope of Work are of such magnitude as to warrant an extension in time or times of completion, such extension of time will be authorized by the Authority in accordance with the provisions of Subsection 108.07. This will be the exclusive remedy to the Contractor, and there shall be no right to anticipated profits or consequential damages.

104.06 Differing Site Conditions. If differing site conditions are encountered at the Work site, the Contractor shall promptly notify the Authority as specified in Subsection 104.08. No further disturbance of the site or performance of the affected Work is to be done after the alleged differing site conditions are noted unless the Contractor is directed to do so, in writing by the Authority.

Upon written notification, the Authority will investigate the conditions and determine if they differ materially as defined in Subsection 101.26.1. If so, and the conditions cause an increase or decrease in the cost or time required for the Contractor to perform the Work, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Authority will notify the Contractor of its determination, whether or not an adjustment of the Contract is warranted.

No Contract adjustment resulting in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice as specified in Subsection 104.08.

Adjustments in the Contract price will be made under Subsection 109.04, and adjustments in Contract Time will be made under Subsection 108.07.

104.07 Suspension of Work / Annulment of Contract. The Authority may suspend the Work in whole or in part by written order to the Contractor, for any reason or condition which would be in the best interest of the Authority.

The Authority may also suspend the Work when the Contractor fails to perform any provisions of the Contract. The Contractor shall immediately comply with the written order of the Authority to suspend the Work wholly or in part. The Work shall be resumed when conditions are favorable as determined by the Authority or when methods are corrected as approved in writing by the Authority.

If the Contractor considers the delay resulting from the written suspension order unreasonable, the Contractor shall submit a written request to the Authority providing the reasons and justification for any Contract adjustment considered necessary as a result of the suspension. The justification for a time extension shall follow the notification and documentation procedures defined in Subsection 108.07. The written request for the Contract adjustment must be submitted to the Authority in writing seven (7) Calendar Days following receipt of the Authority's notice to resume Work. An adjustment will not be considered unless the request has been submitted within the prescribed time.

There will be no adjustment under the provisions of this Subsection if the Work performance would have been suspended or delayed by any other cause, under any other terms or conditions of the Contract, or under applicable law.

The request for an adjustment will be reviewed by the Authority. If there is agreement that 1) there has been an increase in the Contract performance cost or time as a result of the suspension, and 2) the suspension was caused by conditions beyond the control and not the fault of the Contractor or those parties for whom the Contractor is responsible, adjustments in the Contract price, excluding profit and/or consequential losses, will be made according to Subsection 109.04. Any adjustments to Contract Time will be made according to Subsection 108.07.

When Work is suspended as above provided, payments for the completed parts of the Work will be made as provided in Subsection 109.07 and a suitable extension of time for completing the suspended Work will be granted. No other compensation or allowance will be made on account of such suspension, unless such suspension shall be for more than ten (10) Calendar Days. Should the suspension be for more than ten (10) Calendar Days and should the Contractor be put to additional expense on account thereof, the Contractor shall have the right to file with the Authority a statement showing the character and amount of such additional expense, excluding profit and consequential losses, and if the Authority deems it a proper charge, the Contractor will be reimbursed therefor. However, the Contractor shall have no claim for additional expense for the first ten (10) Calendar Days of said suspension and any claim allowance as above provided shall be filed, in writing with the Authority, before the expiration of the first ten (10) Calendar Days of suspension. No payment will be made for Work done by the Contractor on suspended Work.

If the suspension extends for one (1) year and the value of the suspended Work, based on bid prices and estimated quantities, exceeds twenty-five (25) percent of the Awarded Contract Value, the Authority will, at the Contractor's request, annul the Contract as provided below. When said value is twenty-five (25) percent or less and the suspension extends for one (1) year, the Authority will, at the Contractor's request, by Change Order as provided in Subsection 104.05, omit the suspended Work from the Contract.

If, in the event of a national or state-wide emergency, construction is stopped, either directly or indirectly, by a Federal or State agency or when the Executive Director deems it advisable in the interest of the Authority, the Executive Director may annul the Contract, without liability, on thirty (30) Calendar Days' prior written notice to the Contractor.

If the Contractor is not in default, payments will be made for completed Work as provided in Subsection 109.10 for all Work done under the terms and conditions of the Contract, except that payments will be made in such amounts as the Authority may consider just and proper for such parts of the Work that are not fully completed and for that reason not susceptible to classification under the bid prices and for expenditures in connection with the preparing for and moving Equipment to and from the Work for which the Contractor is not otherwise compensated. It is understood and agreed, however, that no payments shall be made for any claim for loss of anticipated profits.

When the Contract is annulled as above provided, the Contractor shall, if so required by the Authority, remove promptly any or all of his, her or its Equipment and supplies from the site of the Project or other property of the Authority, failing which the Authority may remove such Equipment and supplies at the expense of the Contractor.

104.08 Notification of Differing Site Conditions and Extra Work. The Contractor shall immediately notify the Authority of alleged changes to the Contract due to differing site conditions, extra work, altered work beyond the scope of the Contract, or action(s) or lack of action(s) taken by the Authority that have allegedly changed the Contract terms and conditions.

A. No further Work is to be performed or Contract costs incurred on the change after the date the change occurs unless directed otherwise by the Authority.

B. Within seven (7) Days of the initial notification, the Contractor shall provide the following applicable information to the Authority in writing:

1. The date of occurrence and the nature and circumstances of the occurrence that constituted the alleged change.
2. Name, title, and activity of each Authority representative knowledgeable of the alleged change.
3. Identify any documents and the substance of any oral communications involved in the alleged change.
4. Basis for an allegation of accelerated schedule performance, if applicable.
5. Basis for an allegation that the work is not required by the Contract, if applicable.
6. Particular elements of Contract performance for which additional compensation may be sought under this Subsection including:

- a. Contract Item(s) that have been or may be affected by the alleged change.
- b. Labor or materials, or both, that will be added, deleted, or wasted by the alleged change and what equipment will be idled or required.
- c. Delay and disruption to the manner and sequence of performance that has been or will be caused by the alleged change.
- d. Estimated adjustments to Contract price(s), delivery schedule(s), staging, and Contract Time necessary due to the alleged change.
- e. Estimate of the time within which the Authority must respond to the notice to minimize cost, delay, or disruption of performance.

The failure of the Contractor to provide required notice in accordance with this Subsection shall constitute a waiver of any and all entitlement to adjustments in the Contract price or Contract Time as a result of the alleged change.

C. Within ten (10) Days after the receipt of notice, the Authority will respond in writing to the Contractor to:

1. Confirm that a change occurred and, when necessary, direct the method and manner of further performance;
2. Deny that a change occurred and, when necessary, direct the method and manner of further performance; or
3. Advise the Contractor that additional time is required to evaluate the allegation or adequate information has not been submitted to decide whether this Subsection 104.08 C1 and/or C2 above applies, and indicate the needed information and date it is to be received by the Authority for further review.

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

104.09 Maintenance and Protection of Traffic.

Highway Traffic. Except where the Plans or Specifications specifically permit the closing of a portion or all of an existing Roadway normally open to traffic, the Work shall be so planned as to maintain a continuous flow of traffic at all times along all existing Roadways within and adjacent to the Project limits, with the absolute minimum amount of interruption of or interference with such traffic. Roadways or portions of Roadways to remain open to traffic shall be completely free from obstructions, including spillages from trucks, and shall be in a smooth riding condition. The Contractor shall provide for allaying dust as specified in Subsection 107.07.

Pedestrian traffic shall be protected at all times. Temporary walkways shall be provided where necessary or directed in order to maintain routes of access.

Within ten (10) Calendar Days after execution of the Contract, the Contractor shall submit, in writing, for the approval of the Authority, a plan of the methods, facilities and devices proposed to be used for the maintenance and protection of traffic.

The Contractor shall erect or place and maintain in good condition barricades, temporary warning and directional signs, lights, flares, approved electric flasher units, traffic cones and other warning and danger signals and devices, appropriate and adequate for the specific needs and subject to the Authority's approval, at working sites, closed roads, intersections, open excavations, and locations of Material storage, standing Equipment and other obstructions, at points where the usable traffic width of the road is reduced, at points where traffic is deflected from its normal courses or lanes, and at other places of danger to vehicular or pedestrian traffic or to completed Work.

The Contractor shall provide all necessary illumination, floodlighting and additional traffic protection measures as necessary for the orderly performance of Work at night.

The cost for premium pay for night work, illumination, additional traffic protection and incidentals in connection therewith shall be deemed to have been included in the Contractor's Unit Prices bid for the various items listed in the Contract Documents.

The Contractor shall furnish, erect and maintain traffic control devices in conformance with the current Manuals, and in accordance with the provisions shown on the Plans or as ordered by the Authority and as directed by the Authority's Police. Maintenance and protection of traffic shall be considered as an integral part of this Subsection.

Signs, barricades, traffic cones, guide posts, flares and electric flasher units shall be established, relocated, repaired and replaced in such manner and at such times and places as may be necessary for adequate protection of vehicular and pedestrian traffic, subject to approval of the Authority.

The Contractor shall provide Certified Traffic Control Supervisor(s) and shall take all other precautions, including any which may be ordered by the Authority that may be necessary for the safety of the public and protection of the Work. The Certified Traffic Control Supervisor(s) shall patrol hourly and replace missing or damaged flares and other lighting units or devices.

The Contractor shall not perform any construction work over vehicular or pedestrian traffic unless there is an explicit provision therefor in the Specifications, or a specific written permission by the Authority. Subject to such provision or permission, the Contractor shall provide the necessary devices and means to protect such traffic from falling construction Materials and other objects and from painting operations during the time that construction work is carried on above traffic.

When the Contract provides for the construction of a temporary detour road, the Contractor shall construct the detour in accordance with the requirements given for the corresponding operations of permanent construction, and payment therefor will be made under the usual items for such construction operations unless otherwise specified in the Specifications. The Contractor shall furnish and erect all necessary signs and other traffic protective devices for such detour and provide Certified Traffic Control Supervisor(s) as may be required. The Contractor shall be responsible for maintaining the pavement and devices in good condition throughout the period the detour is in use, except when the Specifications specifically require that the detour is to remain in service following the termination of the Contract, in which case the Contractor shall leave all protective devices in place and the Contractor's responsibility for maintaining the devices and payment will terminate with the Contract. Otherwise, the detour road and all devices shall be removed when no longer needed and the site occupied thereby restored to its original condition.

When the Contractor wishes to temporarily reroute traffic along existing Roadways or along detour roads not specifically required to be constructed under the Contract, the Contractor shall first obtain approval therefor from the Authority and consent of the appropriate parties having jurisdiction. The route shall be properly signed and delineated. The cost of all such work shall be borne by the Contractor.

All traffic protective devices shall at all times remain the property of the Contractor and shall be removed from the site when no longer needed, except when the Contract specifically states that the devices are to remain in place and become the property of the Authority.

Existing roads and streets that are proposed to be dead-ended or abandoned shall not be closed to traffic until so authorized by the Authority.

Work which closes or alters the use of existing roads and streets shall not be undertaken until adequate temporary or permanent provisions for traffic have been provided or arranged for by the Contractor and such provisions have been approved by the Authority.

Railroad Traffic. Where the Project includes Work across, over, under or adjacent to railroad tracks or railroad rights-of-way, the Contractor shall safeguard the traffic, tracks and appurtenances and other property of the railroad affected by the Work. The Contractor shall comply with the regulations of the railroad company relating to the Work, shall keep the tracks clear of obstruction, shall provide barricades, warning signs, lights, flares and other danger signals and means of protection and shall arrange with the railroad company for the furnishing of watchmen and flagmen and other protective services that may be required by the railroad company. The Contractor shall arrange with the railroad company for direct payment to the company for watchmen, flagmen and other protective service which it may require.

When so specified in the Special Provisions, the Contractor shall provide railroad protective liability insurance in the prescribed limits to cover the Work to be performed on, over, under or adjacent to railroad property.

Marine Traffic. For all operations to be performed in the Delaware River and Delaware Bay, the Contractor shall comply with all governmental regulations and permitting requirements pertaining to the Work and shall secure all permits necessary for the performance of such Work.

All Work shall be conducted so that the free navigation of the waterway shall not be unreasonably interfered with and the present navigable depths shall not be impaired. The channel shall be promptly cleared of all pilings or other temporary or movable obstructions placed therein or caused by the operations of the Contractor when, in the opinion of the District Engineer of the Department of the Army, there is no further need for such obstructions or their presence creates a hazard to marine traffic.

Under no circumstances shall excavated material be dumped into the Delaware River, Delaware Bay or waters of the United States.

Any Work of a temporary nature required by the Department of the Army, the United States Coast Guard and/or any other agency having jurisdiction, including but not limited to the placement of lights, signals, buoys, etc., to protect navigation during construction operations, shall be provided by the Contractor at his, her or its own expense.

104.10 Rights In and Use of Materials Found on the Work. The Authority may authorize the Contractor's use of Materials found in the excavation. Payment will be made to the Contractor for the excavation of such Materials at the corresponding Contract Unit Price.

The removed Material shall be replaced if necessary with acceptable Material at no cost to the Authority. The Contractor shall not excavate or remove any Material from within the highway location that is not within grading limits without written authorization from the Authority.

104.11 Restoration of Surfaces Opened by Approval. The right to construct or reconstruct any utility service or to grant approval to construct or reconstruct is, at any time during construction, hereby expressly reserved by the Authority. The Contractor shall not be entitled to any damages for unauthorized digging or any delay occasioned thereby.

Any individual, firm, or corporation wishing to make an opening must secure approval from the Authority. The Contractor shall allow parties bearing such approval, and only those parties, to make openings. When ordered, the Contractor shall make all necessary repairs due to such openings and such necessary work will be subject to the same Contract conditions as the original Work performed.

104.12 Value Engineering Proposals ("VEP") by the Contractor. Any cost savings generated to the Contract as a result of VEP offered by the Contractor and approved by the Authority will be shared by the Contractor and the Authority on a 50-50 basis.

Bid prices shall not be based on the anticipated approval of a VEP. If the VEP is rejected, the Contract is to be completed at the Contract bid prices.

If the Authority determines that the time for response indicated in the submittal under 104.12 subpart B below is insufficient for review, the Contractor will be promptly notified. Based on the additional time needed by the Authority for review and the effect on the Contractor's schedule occasioned by the added time, the Authority will evaluate the need for a time extension to the Contract. The Contractor shall have no claim against the Authority for delays to the Contract based on the failure to respond within the time indicated in 104.12 subpart B below if additional information is needed to complete the review. Until the proposal is accepted by the Authority, the Contractor shall remain obligated to the terms and conditions of the existing Contract.

A. **General.** VEP contemplated are those that could produce a savings to the Authority without impairing essential functions and characteristics of the facility, including but not limited to, service life, economy of operation, ease of maintenance, desired appearance, and safety.

B. **Submittal of VEP.** If the Contractor intends to submit a VEP, the subsequent steps shall be followed:

1. Submit a conceptual proposal that includes a description of the difference between the existing Contract and the proposed changes, and the cooperative advantages and disadvantages of each, including effects on Contract schedule, service life, economy of operations, and ease of maintenance, desired appearance, and safety.

If the VEP was previously submitted on another project, indicate the Contract number and the action taken by the Authority.

2. Upon approval of the concept by the Authority, submit for review and approval a complete set of Plans and Specifications showing the proposed revisions relative to the original Contract features and requirements.

Provide a statement detailing the effect the VEP will have on the time for completing the Contract.

Submit a complete analysis indicating the final estimated costs and quantities to be replaced by the VEP compared to the new costs and quantities generated by the VEP.

Provide a statement specifying the date by which a Change Order adopting the VEP must be executed to obtain the maximum cost reduction during the remainder of the Contract.

C. Conditions. A VEP will be considered only when all of the following requirements are met:

1. A VEP, approved or not approved by the Authority, applies only to the ongoing Contract(s) referenced in the VEP and becomes the property of the Authority. The VEP shall contain no restrictions imposed by the Contractor on its use or disclosure. The Authority shall have the right to use, duplicate, and disclose in whole or in part any data necessary for the use of the VEP. The Authority retains the right to use any VEP or part thereof on other projects without obligation to the Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.
2. If the Authority is already considering certain revisions to the Contract or has approved certain changes in the Contract for general use that are subsequently incorporated in a VEP, the Authority will reject the VEP and may proceed without obligation to the Contractor.
3. The Contractor shall have no claim against the Authority for costs or delays due to the Authority's rejection of a VEP, including but not limited to development costs, loss of anticipated profits, and increased material or labor costs.
4. The Authority will be the sole judge as to whether a VEP qualifies for consideration and evaluation. The Authority may reject any VEP that requires excessive time or costs to review, evaluate, or investigate, or that is not consistent with the Authority's design policies and criteria for the Project.
5. The Authority will reject all or any portion of Work performed under an approved VEP if unsatisfactory results are obtained. The Authority may direct the removal of such rejected Work and require the Contractor to proceed in accordance with the original Contract requirements without reimbursement for Work performed under the proposal, or for its removal. Where modifications to the VEP are approved to adjust to field or other conditions, reimbursement will be limited to the total amount payable for the Work at the Contract bid prices as if it were constructed under the original Contract requirements. The rejection or limitation of reimbursement shall not constitute the basis of any claim against the Authority for delay or for other costs.
6. The proposed Work shall not contain experimental features but shall be proven features that have been used under similar or acceptable conditions on other projects or locations acceptable to the Authority.

7. A VEP will not be considered if equivalent options are already provided in the Contract. The VEP must be sufficient to warrant a review and processing.
8. Additional information needed to evaluate a VEP will be provided in a timely manner. Untimely submittal of additional information will result in rejection of the VEP. Where design changes are proposed, the additional information could include results of field investigations and surveys, design computations, and field change sheets.

D. **Payment.** If the VEP is approved, the changes and payment will be authorized by a Change Order. Reimbursement will be made as follows:

1. The changes will be incorporated into the Contract by changes in quantities of unit bid items and/or new agreed price items, as appropriate, under the Contract.
2. The cost of the Value Engineering Work as determined from the changes will be paid directly. In addition, the Authority will pay the Contractor fifty percent (50%) of the savings to the Authority as reflected by the difference between the cost of the revised Work and the cost of the related construction required by the original Contract computed at Contract bid prices.
3. The Contractor's costs for development, design, and implementation of the VEP are not eligible for reimbursement.
4. The Contractor may submit a VEP for an approved Subcontractor. Subcontractors may not submit a VEP except through the Contractor.

104.13 Final Cleaning of Project Site. Before the final acceptance of the Project by the Authority, the Contractor shall remove from the site all Equipment, temporary work, unused and useless Materials, rubbish and temporary buildings; shall repair or replace, in an acceptable manner, fences or other private or public property which may have been damaged or destroyed on account of the prosecution of the Work; shall fill all depressions and water pockets on public and private property caused by the Contractor's operations; shall remove all obstructions from waterways caused by their Work; shall clean all drains and ditches within and adjacent to the site of the Project which have been obstructed by his, her or its operations and shall leave the site of the Project and adjacent public and private property in a neat and presentable condition wherever the Contractor's operations have disturbed conditions existing at the time of starting Work.

The Contractor shall procure and submit to the Authority signed statements from property owners affected that he, she or it has fulfilled his, her or its obligations in the matters enumerated above with regard to their respective properties.

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

Before starting any Work that will change the loadings on an existing or proposed structure, the Contractor shall inform the Authority of the proposed loadings (e.g., axle spacing, axial

loads, stock-piling and Equipment locations) including quantity of and type of construction Equipment and vehicles it proposes to use. The loading that the Contractor's Equipment will apply to the structure shall be evaluated and certified by a professional engineer, obtained by the Contractor, showing that the proposed loadings will not adversely affect the structure. Any proposed loading shall be subject to the approval of the Authority. The Authority's approval does not relieve the Contractor of its responsibility for the safe performance of the Work or for carrying out the Work in full accordance with the Plans and the requirements of the Specifications. If at any time the Contractor's upcoming operations would result in a change to the loading and/or the location of the loading on a structure, the Contractor shall submit the proposed loadings for approval by the Authority prior to changing the loading. No Work shall be done that will change the loadings on any structure within the Contract limits until the Authority's approval has been obtained.

The Contractor assumes full responsibility for Materials and Equipment employed in the construction of the Project and agrees to make no claim against the Authority for damages to such Materials and Equipment from any cause whatsoever, whether arising from the execution or non-execution of the Work. Until final acceptance of the Work, the Contractor shall be responsible for damage to or destruction of the Project, or to any part thereof, due to any cause except as otherwise hereinafter specified, shall rebuild, repair, restore or compensate for injuries and/or damages to any portion of the Work occasioned by any of the above causes before its completion and acceptance and shall bear the expense thereof or it shall be deducted from monies due him, her or it or to become due him, her or it under the Contract.

The Authority will remove snow, when and to the extent necessary, from Roadways open to traffic and within its jurisdiction. The state and local governing agencies will remove snow from other Roadways open to traffic. The Contractor will not be responsible for damage to the Project caused by the operation of snow plows or other snow removal or de-icing operations carried on by or under the supervision or direction of others. The Contractor will be responsible for removing snow from other areas within the Project limits as may be necessary for the proper prosecution of his, her or its Work.

Section 105 - Control of Work

- 105.00** Authority of the Executive Director
- 105.01** Authority of the Engineer
- 105.02** Authority and Duties of Inspectors
- 105.03** Inspection of Work
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- 105.21** Claims for Delay Damages
- 105.22** Contractor's Responsibilities

105.00 Authority of the Executive Director. The Executive Director shall serve as a non-binding mediator in an effort to resolve any claim or dispute brought by the Contractor on any and all questions arising out of or in any way relating to the Contract or the performance or breach thereof, including, without limitation, any questions concerning the interpretation of Plans and Specifications, the acceptability, quality and quantity of Materials or machinery furnished and Work performed, the classification of Materials, the execution of the Work and the determination of payment due or to become due.

105.01 Authority of the Engineer. The Engineer is the administrator of the Contract and not a supervisor of the Work. All Work shall be performed to the satisfaction of the Engineer, but in no case shall the Contractor be relieved of complete responsibility for the Work. The Engineer will decide all questions which may arise as to the quality and acceptability of Materials furnished and Work performed and as to the manner of performance and rate of progress of the Work. At the preconstruction meeting the Engineer will communicate to the Contractor the chain of command and the extent to which various Authority personnel have authority.

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

The Engineer's authority to impose any Contract sanction, including suspension of the Work, withholding payments, or the like, will not relieve the Contractor of sole and absolute responsibility for the Project, performance of the Work, and the safety of workers and the general public. The Contractor holds the Authority harmless pursuant to Subsection 107.10 for any violation, breach, or omission of this Subsection 105.01.

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

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

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

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

- (a) If a portion of the Work is covered contrary to the Authority's request or to requirements specifically expressed in the Contract, it must, if required in writing by the Authority, be uncovered for the Authority's observation and be replaced at the Contractor's expense without change in the project schedule.
- (b) Any Work done or Materials used without supervision or inspection by the Authority representative may be ordered removed and replaced at the Contractor's expense.
- (c) It is the Contractor's responsibility to obtain authorization from the Authority prior to covering any Work.

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

105.04 Plans and Working Drawings. Plans consisting of general drawings and showing such details as are necessary to give a comprehensive understanding of the Work specified will be furnished by the Authority. The Contractor shall furnish working drawings as may be required by the Engineer. Working drawings shall not incorporate any changes from the requirements of the Contract unless the changes are specifically denoted, together with justification, and are approved in writing by the Engineer. Any change from the requirements of the Contract shall be signed and sealed by a professional engineer registered in the State of Delaware and/or New Jersey, as applicable, based on the location of the Work. Working drawings and submittals shall be identified by the Contract number. Items or component Materials shall be identified by the specific Contract Item number and Specification reference in the Contract.

The Contractor is responsible for the preparation of all working drawings.

Detailed shop or working drawings will be reviewed and returned for correction, as promptly as the conditions will permit. The Contractor shall order no Materials and do no Work relating to said drawings before completion of the Authority's review, with no exceptions taken. The carrying out of the Work or the ordering of the Materials before completion of the review may constitute a cause for rejection of such Work or Materials. No deviations from final reviewed working drawings shall be made without the written approval of the Authority.

By submitting shop or working drawings, product data, samples and similar submittals, the Contractor represents that the Contractor has determined and verified Materials, field measurements and field construction criteria related thereto or will do so and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

Working drawings for steel structures shall consist of shop, erection and other drawings, showing details, dimensions, sizes and other information necessary for the complete fabrication and erection of the metalwork. Working drawings for concrete structures shall consist of any additional detailed drawings, sketches and data sheets as may be required for the prosecution of the Work, such as reinforcing bar lists, bending diagrams, drawings of falsework, bracing, centering and formwork, cofferdams, supports for deck slab finishing machines and masonry layout diagrams. The Contractor shall check completely the details of reinforcement steel shown on the Plans and shall submit complete working drawings for the reinforcement steel to the Engineer for review. The Contractor shall also prepare drawings showing screed elevations for bridge deck slabs.

Working drawings for electrical and mechanical equipment and other systems shall consist of the manufacturer's catalog cuts, drawings, wiring diagrams, etc., and shall be submitted to the Engineer for review.

After all items of a particular system have been reviewed, the Contractor shall submit an "Operations and Maintenance Manual" specifically for the system. The "Operation and Maintenance Manual" shall contain an equipment list, a complete description of the equipment, the sequence of operation including inter-locking and protective features, the use of by-pass switches, and a detailed description of all wiring circuits. The manual shall also contain a recommended spare parts list, renewal parts bulletins, and instruction bulletins for the equipment furnished. Diagrams and drawings shall be of reduced size suitable for binding. A proper index listing all items shall be included. All diagrams and drawings shall be properly fastened and bound in a suitable leather or heavy plastic cover with a title clearly shown.

The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract by the Authority's review of shop or working drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Authority in writing that such deviation at the time of submittal and the Authority has given written concurrence with the specific deviation. The Contractor shall not be relieved of responsibility for errors and omissions in shop or working drawings, product data, samples or similar submittals by the Authority's review.

The Contractor shall direct specific attention in writing or on resubmitted shop drawings, product data, samples or similar submittals to revisions, including those requested by the Authority on previous submittals.

Prior to final inspection, five (5) copies of the "Operations and Maintenance Manual" shall be supplied to the Engineer. The manual must be available during the period when electrical and mechanical systems are being connected and energized, and the final bound copies must reflect any changes or adjustments made during this period.

Work shall not be performed or Materials ordered prior to completion of the Authority's review, with no exceptions taken. Working drawings marked with any suggested modifications or comments will be returned to the Contractor. The other sets will be retained by the Authority.

If the Contractor agrees with all Authority comments, the comments shall be incorporated, and the Contractor does not need to resubmit the drawings. If the Contractor does not agree with any Authority comments, then the Contractor shall state this in writing and submit this to the Authority within ten (10) Working Days after receipt of the comments.

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

Reviewed working drawings, submittals, or resubmittals will be transmitted to the Contractor within forty-five (45) Days from the date of receipt by the Authority. If a railroad, the U.S. Coast Guard, municipality, or other entity as specified in the Contract is required to review the working drawings, the reviewed working drawings will be returned within sixty (60) Days from the date of receipt by the Authority. If the working drawings are not returned by the time specified, no additional compensation will be allowed except that an extension of time in accordance with Subsection 108.07 will be considered, provided that it can be agreed that the schedule is directly affected. Upon completion of the Work, the original drawings of structural steel work shall be supplied to the Authority.

The Contractor shall furnish the Engineer with three (3) copies of the working drawings for review, after which one copy will be returned with corrections, if any. Any drawings returned for correction shall be resubmitted in triplicate. When accepted, seven (7) copies of each drawing shall be submitted to the Engineer.

Upon completion of the Project, the working drawings shall be furnished to the Engineer in PDF format. When specifically permitted by the Engineer, smaller details may be drawn on sheets 8½" x 11" in overall dimension.

The PDF file resolution shall be acceptable to the Engineer and appropriate for printing on 11" x 17" paper as well as 22" x 36" paper. At 22" x 36", the left margin shall be 1 ½" with ½" remaining margins.

A record set of "As-Built Drawings" shall be maintained by the Contractor. Prior to final acceptance of the Project, the "As-Built Drawings", in PDF format, shall be submitted to the Authority.

105.05 Conformity with Plans and Specifications. All Work performed and all Materials furnished shall be in reasonably close conformity with the lines, grades, cross-sections, dimensions, and Material requirements, including tolerances, shown on the Plans or indicated in the Specifications.

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

In the event the Engineer finds the Materials or the finished product in which the Materials are used or the Work performed are not in reasonably close conformity with the Plans and Specifications, and the result is an inferior or unsatisfactory product, the Work or Materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor. If there are provisions in the Contract for the acceptance of Materials or Work that are not in

full compliance with the minimum requirements stated, pay adjustment factors reflecting the payment to be made for the Work or Materials will be included in the applicable Sections.

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

1. Addenda (Including Pre-bid meeting minutes & Pre-bid Questions and Answers)
2. Pay Units in Bid Forms
3. Plans
4. Cross sections (When included as part of the Contract Documents)
5. Special Provisions
6. Supplemental Specifications
7. General Provisions
8. Standard Specifications (other than the General Provisions and Supplemental Specifications)

In case of a discrepancy between these Contract components for Projects that are not completely financed with Authority funds the governing ranking will be established by the requirements of the funding source which may be set forth in the Special Provisions.

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

105.07 Cooperation by the Contractor. One copy of the Plans and Contract shall be kept at the Project site at all times. The Contractor shall give the Work constant attention necessary to facilitate progress and cooperate with the Engineer in every way possible.

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

The Contractor shall furnish the Authority with every reasonable facility for ascertaining whether or not the Work is being done in accordance with the Contract.

The Contractor shall provide the Inspectors with adequate means of transportation across waterways and marshlands to and from the work sites as may be necessary for the inspection of the Work.

The Contractor shall also furnish, construct and maintain whatever may be necessary of walkways, platforms, ladders, stairways and other facilities of usual and suitable character and

adequate strength to provide properly for all operations of construction and inspection of Work under the Contract.

The Contractor is particularly advised of the Contractor's responsibilities in coordinating Work and storage of Materials within the Project site.

All Materials removed as part of the Work under this Contract shall, upon their removal, become the Contractor's property and shall be removed and legally disposed of by the Contractor away from Authority property unless stated otherwise in this Contract or on the Contract drawings.

By submission of the Bid and execution of the Contract, the Contractor accepts the relationship of trust and confidence established with the Authority pursuant hereto, and covenants with the Authority to furnish its best skill and judgment and to cooperate with the Authority and all design professionals, consultants, engineers, architects, contractors, suppliers, accountants, attorneys and other persons or entities retained by the Authority in connection with the Project. Contractor shall perform all such duties by the best and soundest means and methods and in the most expeditious and economical manner consistent with the interests of the Authority. The Contractor represents that its services shall be performed in accordance with best recognized professional standards.

The working force, Equipment and working site provided by the Contractor for the Project shall at all times be adequate and sufficient to insure the completion of the Project within the time stipulated therefor. When, in the opinion of the Authority, either the working force, the Equipment or the working site, or any or all of them are inadequate or insufficient to insure completion within said time, the Authority may order the Contractor to correct the deficiency and the Contractor shall comply with such order.

The Contractor and their Subcontractors shall not engage, on a full or part-time or other basis during the period of the Contract, any of the professional or technical personnel of the Authority or of any agency of any state, county or municipality, who are or have been at any time during the period of the Contract or for thirty (30) Days prior to the Award of the Contract, in the employ of such public agencies, except regularly retired employees, without the written consent of the public employer of such personnel.

The Contractor shall attend to the Work personally or through a competent, English-speaking superintendent of the Work authorized to receive and carry out instructions. The workmen shall be competent and shall perform their Work in a neat and workmanlike manner. Any workman not properly qualified for the Work or who is doing it in an unsatisfactory manner or contrary to the Specifications or the Authority's instructions, or who is disorderly, shall be discharged if so requested by the Authority and shall not be employed again on the Project except with the approval of the Authority. The superintendence and the number of workmen shall be sufficient, in the opinion of the Authority, to insure the completion of the Project within the time stipulated therefor.

The Contractor shall employ only competent and efficient laborers, mechanics or artisans. Whenever, in the opinion of the Authority, any employee is careless or incompetent, obstructs the progress of the Work, acts contrary to instructions or conducts himself or herself improperly, the Contractor shall, upon the request of the Authority, discharge the employee from the Work and shall not again employ the subject employee on the Project except with the written consent of the Authority.

Employment preference shall be given, other conditions being equal, to honorably discharged members of the Armed Services of the United States, but no other preference or discrimination among citizens of the United States shall be made.

105.08 Cooperation Between Contractors. The right is reserved by the Authority to do Work with its own employees or by other contractors and to permit public utility companies and others to do Work during the progress and within the limits of or adjacent to the Project and the Contractor shall conduct his, her or its Work and cooperate with such contractors, utility companies and others so as to cause as little interference as possible with their work. The Contractor shall allow other contractors, utility companies and their agents access to his, her or its work within the site of the Project. The Contractor shall and hereby does agree to make no claims against the Authority for additional payment due to delays or other conditions created by the operations of such other parties. If there be a difference of opinion as to the respective rights of the Contractor and others doing work within the limits of or adjacent to the Project, the Executive Director will decide as to the respective rights of the various parties involved in order to secure the completion of the Authority's work in general harmony and in a satisfactory manner. The Executive Director's decision shall be final and binding on and shall not be cause for claims by the Contractor.

Each Contractor will be held responsible for any damage done or caused by his, her or its Work or work forces and shall repair or make good any such damage in a manner satisfactory to the Authority and without cost to the Authority.

It will be the obligation of each Bidder to examine the Work site and make inquiries concerning the current construction schedules of contracts in progress, so as to ascertain the status and intended rate of progress of other contracts which may affect the Work under the Contract. The price Bid shall be considered to have reflected the effect the work of other contractors may have on the Work related to the construction required under the Contract.

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

Utilities, as referred to in this Subsection, shall be understood to mean utilities owned by the Authority as well as public utilities and other privately owned utilities.

Except as otherwise specifically provided, the Contractor shall be responsible for the safety, protection, maintenance and final restoration to as useful, safe and durable a condition as existed prior to construction, of all surface and subsurface utilities (together with all parts and appurtenances thereof), facilities, streets, waterways, structures and other properties at or near the site.

The Contractor shall not proceed with any Work until the Contractor has made diligent inquiry at the offices of the Engineer, the utility companies and municipal authorities or other owners to determine the exact utility location of any utilities on the Work site. The Contractor shall notify, in writing, the utility companies and municipalities or other owners involved of the nature and scope of the Project and of the operations that may affect their facilities or property.

Before the Contractor begins any Work or operations in the vicinity of subsurface structures, the Contractor shall carefully locate such structures and conduct his, her or its operations so as to avoid any damage to them.

The Contractor shall notify the owners of utilities or other properties well in advance of the time he, she or it proposes to perform any Work which would endanger their facilities or property and shall cooperate with the owners in protecting their facilities and property during construction operations.

The Contractor shall permit the owners of utilities and personnel engaged by he, she or its access to the site of the Work at all times in order to protect or relocate their facilities and the Contractor shall cooperate with them in performing this Work.

Unless otherwise specifically stated in the Supplemental Specifications or the Special Provisions, the Contractor shall be responsible for the continuity of service of all overhead, surface and subsurface utilities affected by their operations and shall maintain them in a safe and satisfactory operating condition.

The Contractor shall carry out the Work carefully and skillfully and shall support and secure utility structures so as to avoid damage to them. Flow-in drains and sewers shall be satisfactorily maintained. The Contractor shall not move any utility structures without the owner's written consent and at the completion of the Work, the condition of the utilities shall be as safe and permanent as before the completion of the Work.

The Contractor shall at his, her or its own expense make good any direct or indirect damage that may be done in the course of construction to any utility structure or property through or by reason of the prosecution of the Work. The liability of the Contractor under this covenant is absolute and is not dependent upon any questions of negligence on his, her or its part or on the part of his, her or its agent, servants, employees, Subcontractors or Suppliers and the neglect of the Authority to direct the Contractor to take any particular precaution or to refrain from doing any particular thing shall not excuse the Contractor of any such damage in any case.

When utility structures, facilities or equipment are damaged by the Contractor, the Contractor shall notify the owner(s) of the utilities, who may cause the damage to be repaired at the Contractor's expense. If the cost thereof is not paid by the Contractor within thirty (30) Days after repairs have been completed, the Authority may retain an amount sufficient to cover the cost from any monies due or that may become due the Contractor under the Contract.

It is understood and agreed that the Contractor has considered in his, her or its bid all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience or damage sustained by the Contractor due to any interference from the said utility appurtenances or the operation of moving them.

105.10 Construction Stakes, Lines, and Grades. The Engineer will establish the following control points to enable the Contractor to properly reference and locate the Work:

- (a) For road work on land, the Authority will provide sufficient vertical and horizontal control to permit the contractor to lay out the Work.

- (b) For structures on land, both centerlines of each structure and a temporary benchmark adjacent to each structure.
- (c) For structures in waterways, sufficient triangulation from points on land to locate the centerlines of each structure and a centerline of the bridge roadway, as well as control benchmarks (land-based) for determining the elevations for each structure and bridge roadway.

The Contractor shall, at his, her, its own expense:

- (a) Establish with his, her or its own engineering force all lines and grades from the control points established by the Engineer, as may be necessary to perform his, her or its Work.
- (b) Furnish all stakes, templates and other Materials necessary to perform the engineering work required.
- (c) Maintain and protect all stakes and benchmarks provided by the Engineer.
- (d) Replace all stakes and benchmarks established by the Engineer which may be disturbed or destroyed by the Contractor.
- (e) Furnish such assistance to the Engineer as he, she or it may require in checking the layout of the Work and conformance to prescribed lines and grades.

The Contractor shall be solely responsible for all parts of the Work being in their exact positions with reference to the control points established by the Engineer.

105.11 Removal of Defective and Unauthorized Work. The Contractor shall use no Materials in the Work before they have been accepted, shall perform no Work before the lines, grades and benchmarks have been set and established and shall perform no Work not provided for in the Contract unless a Change Order or Supplemental Agreement therefor has been issued. Work performed and Materials furnished which do not conform to the requirements therefor will be rejected and shall be removed, replaced or repaired as the Authority may order and in a manner satisfactory to the Authority, at the Contractor's expense. Materials which have been rejected, the defects of which have been subsequently removed or corrected, shall not be used unless accepted by the Authority.

Failure of the Contractor to remove and properly dispose of rejected Work immediately after receiving formal notice to do so may be sufficient cause for annulment of the Contract, in which case the Authority may purchase Materials, tools and Equipment from, employ labor from, or contract with any other individual, firm or corporation to perform the Work. All costs and expenses incurred thereby shall be charged against the defaulting Contractor and the amount thereof deducted from any monies due or which may become due the Contractor, or shall be charged against the Contract Bond.

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

105.13 Maintenance During Construction. The Contractor shall maintain the Work during construction and until the Project is accepted. This maintenance shall be performed continuously every day, and with adequate Equipment and workmen to keep the Roadway and structures in a satisfactory condition.

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

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

The cost of maintenance work during construction and before the Project is accepted shall be incidental to the Contract.

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

The Contractor shall mow all grass and weeds within the limits of the Contract, as directed by the Engineer and in compliance with Subsection 107.01.

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

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

A. If the Contract provided for total road closure, and the opening is not due to the fault or inactivity of the Contractor, the added costs will be at the Authority's expense. Compensation for these added costs will be in accordance with Subsection 109.04.

B. If the opening was designated as part of the Contract in "phased" or "staged" construction (only when defined as such in the Contract), then the added Work will be performed at the Authority's expense unless damage was reimbursed by Contractor's insurance. Compensation for this added Work will be in accordance with Subsection 109.04. This does not apply to Contracts that do not have defined "phased" or "staged" construction.

C. If the opening was due to the fault or inactivity of the Contractor, then the Work will be performed at no additional expense to the Authority. If the Contractor is dilatory in completing features of the Work according to the Contract or progress schedule, the Engineer will give written notification establishing a time period for completing these features. If the Contractor fails to complete or make a reasonable effort to complete the Work according to the written notification, the Engineer may order all or a portion of the Project opened to traffic. The Contractor shall not be relieved of liability or responsibility for maintaining the Work and shall

conduct the remaining construction operations, with minimum interference to traffic, at no additional expense to the Authority for any added cost of the Work.

105.15 Claims for Adjustment and Disputes. In any case (i) where the Contractor believes that extra compensation is due for Work or Material not clearly covered in the Contract or not ordered by the Authority as an extra, the Contractor feels that it has encountered unusual and unforeseen conditions beyond its control, as defined herein, not discoverable by reasonable inspection and diligence on the Contractor's behalf or any other claim, dispute or other matter in question between the Authority and the Contractor arising out of or in any way relating to the Contract or the performance or breach thereof, and (ii) where all other Contract provisions have been complied with, the Contractor shall notify the Engineer in writing of its intention to make claim within seven (7) Calendar Days following the date the Contractor begins the Work on which the claim is based. If written notification is not given within such period and the Engineer is not afforded proper facilities by the Contractor for keeping strict account of actual costs as required, then the Contractor waives his, her or its claim.

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

1. The date of occurrence and the nature and circumstances of the occurrence that give rise to the claim;
2. The name and title of Authority representatives knowledgeable of the claim; and
3. If applicable, the particular elements of Contract performance for which additional compensation may be sought under this Subsection.

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

B. Engineer Response. Within ten (10) Calendar Days after receipt of notice, the Engineer will respond in writing to the Contractor to:

1. Confirm that a change in Work occurred and that it shall be paid as an extra as provided herein; or
2. Direct the Contractor to follow the claims submittal procedure as outlined; or
3. Advise the Contractor that adequate information has not been submitted to decide whether above subparts B.1. or B.2. shall apply, and indicate the need for more information for further review. The Authority will respond to such additional information within ten (10) Calendar Days of receipt from the Contractor.

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

C. Claim Submittal. The Contractor must submit a formal claim in writing within sixty (60) Calendar Days after the Work giving rise to the claim has been completed. The Contractor can only recover, and the formal claim shall only consist of those items allowed under Subsection 105.19 and the claim shall contain:

1. The precise nature and basis for the claim;
2. Each fact upon which the Contractor relies to support the claim;

3. The precise reason the Contractor believes the claim should be granted;
4. The language in the Contract upon which the Contractor relies in support of the claim;
5. The amount of money or nature and extent of relief to which the Contractor believes it is entitled; and
6. Any other factors which the Contractor believes support the claim.

The Contractor agrees to follow the procedure described in this Subsection and that any claimed dollar amount and/or relief sought, not made pursuant to this Subsection within the time limits prescribed, shall be forever waived and not raised at any subsequent meeting or hearing dealing with the claim.

Claims and disputes submitted in accordance with this Subsection will be first reviewed fully at the Engineer's level. Within thirty (30) Calendar Days after receiving the claim submittal, the Engineer will respond, in writing, with the Authority's decision. If additional time is required by the Authority to review the claim, the Engineer will notify the Contractor.

Rejection of the claim or dispute by the Engineer may be appealed to the Chief Operating Officer for review. The Contractor shall give notice of the appeal, in writing, within ten (10) Calendar Days of the rejection by the Engineer. The Chief Operating Officer will conduct a claim review meeting attended by representatives of the Contractor and the Authority. The Chief Operating Officer will conduct the claims review meeting within forty-five (45) Calendar Days after receiving the Contractor's notice of appeal.

The Contractor may appeal the Chief Operating Officer's decision by requesting, in writing, within ten (10) Days of such decision, non-binding mediation with the Executive Director. If the mediation is unsuccessful, either party may proceed with the dispute resolution process as outlined in Subsection 105.17. The Executive Director shall issue a written report as to the results of the mediation, regardless of outcome.

105.16 Executive Director's Decision. After receiving the written notification from the Contractor requesting mediation, the Executive Director will notify the Contractor, in writing, within thirty (30) Calendar Days of the receipt of the request and promptly schedule mediation. The Executive Director shall issue a written report as to the results of the mediation, regardless of the outcome, within sixty (60) Calendar Days after notification to the Contractor of the Executive Director's receipt of the request for mediation.

105.17 Dispute Resolution. (a) If any claim is properly presented by the Contractor pursuant to Subsection 105.15, processed through the claims procedure and the mediation process with the Executive Director pursuant to Subsection 105.16, and the Contractor and the Authority fail to agree as to the resolution thereof, then upon the demand of either party delivered in writing to the other within thirty (30) Calendar Days from the date of the written report of the Executive Director as provided in Subsection 105.16, the claim shall be decided by exclusive, final and binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, except as otherwise modified by these Specifications. Such arbitration proceeding may involve presentation of facts or such portions thereof as have previously been presented at the prior administrative proceedings held pursuant to Subsections 105.15 or 105.16 herein or may be based entirely upon the record, as established therein. The record established at the prior administrative proceedings pursuant to Subsections 105.15 or 105.16 shall be specifically admissible at such arbitration proceedings and such facts as have been established shall be specifically binding upon the parties, with the

exclusion of opinions and conclusions thereon. Such arbitration shall be specifically based upon the claim(s) presented at prior administrative proceedings, and no material, information, fact and/or claim not presented at such proceedings held pursuant to Subsections 105.15 or 105.16 shall be admissible at any arbitration conducted pursuant to this Subsection 105.17. The arbitrators, in their final ruling on the claim, shall include a summary of the evidence, findings of fact based upon the evidence, conclusions of law and a concise statement of the relief awarded.

(b) Except as and to the extent the Authority may otherwise determine, any Disputes arising out of or in any way related to the Contract or the performance or breach thereof that are raised by the Authority and therefore not subject to the claim submittal process outlined in Subsection 105.15 and non-binding mediation in Subsection 105.16, shall be subject to exclusive, final and binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, except as otherwise modified by these Specifications.

(c) These provisions for dispute resolution are intended as a binding agreement to arbitrate under the Delaware Uniform Arbitration Act, 10 Del. C. §§ 5701 et seq., and shall be specifically enforceable. Any award rendered in any such dispute resolution procedure shall be final and judgment may be entered upon it by a court of competent jurisdiction in accordance with applicable law.

(d) If a Dispute shall arise under any Contract in connection with payments to be made to the Contractor hereunder, or otherwise in connection with the performance or alleged non-performance by any party of its obligations hereunder, the Contractor shall continue during the pendency of such Dispute to perform its services hereunder as if no Dispute shall have arisen. During the pendency of any such Dispute, the Contractor shall be entitled to receive payments from the Authority only for non-disputed items and payments for disputed items shall be deferred until final resolution of the Dispute.

(e) In all events, no claim, action or proceeding shall lie or be maintained by the Contractor, its successors or assigns, or by any Subcontractor or anyone else claiming under or through the Contractor, against the Authority upon any claim based upon or arising out of this Contract or out of anything done in connection with the Contract unless such action or proceeding shall be commenced within one (1) year after the earlier to occur of (i) the date of final completion of the Work or (ii) the termination of the Contract. This subparagraph shall not be deemed or construed to modify any other provision hereof relating to waivers of claims by the Contractor or to extend any period of limitations otherwise provided by law.

105.18 Subcontractor/Materialmen Payments. Payments received by the Contractor from the Authority that represent payments for Work completed or Materials supplied by Subcontractors or materialmen shall constitute a trust fund for the benefit of such Subcontractors and materialmen. These payments shall not be in any way co-mingled with any other project funds of the Contractor and shall be disbursed solely for the benefit of Subcontractors and materialmen with respect to the Project within thirty (30) Calendar Days of receipt of funds from the Authority. The Authority, acting in its sole and absolute discretion, may at any time direct that amounts be disbursed to Subcontractors and materialmen on a co-pay basis or by direct payment from the Authority to such Subcontractor and materialmen, and upon the Authority giving notice to Contractor of such direction, Contractor shall cooperate and take all steps necessary or appropriate to effect compliance with such direction; provided

further that upon the Authority giving notice of such direction, any term of this Contract that is not consistent with such direction shall be of no force and effect.

105.19 Claims. All claims made by the Contractor shall be submitted according to the procedure established in Subsection 105.15. Such claims shall also provide in the written notification a brief statement of the reason and basis for the claim. Within sixty (60) Calendar Days after that portion of the Work upon which the claim is based is completed, the Contractor shall submit a formal claim and if additional compensation is being claimed, such claim shall include an itemized list of labor, Equipment, and Materials used and such other costs as specifically allowed pursuant to this Subsection.

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

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

7. Attorneys' fees, claim preparation expenses or costs of any dispute resolution proceedings, and
8. Interest on any claimed amounts.

I. Any claim submitted shall not affect in any manner the imposition or waiver of Liquidated Damages, except that any Liquidated Damages shall be waived for any delay for which a time extension is granted in accordance with Subsection 108.07.

J. The Contractor agrees to make its accounting records and cost information available at the time of submission of the claim, as well as all such other records as the Authority may require to determine the validity and amount of each item claimed. Such records shall be open to inspection or audit by representatives of the Authority during the life of the Contract and for a period of not less than three (3) years after the Contractor's acceptance of final payment as set forth in Subsection 109.10, and the Contractor shall retain such records for that period. Where payment for Materials, Equipment, or labor is based on the cost of forces other than the Contractor's, the Contractor shall make every reasonable effort to ensure that the cost records of such other forces are open to inspection and audit by representatives of the Authority on the same terms and conditions as the cost records of the Contractor. Payment for the cost of such forces may be deleted if the records of such third parties are not made available to the Authority's representatives. If an audit is to be commenced, the Contractor is to be provided with reasonable notice of the time when such audit is to begin. In case all or a part of such records are not made available, the Contractor understands and agrees that any items not supported by reason of such unavailability of the records will not be allowed, or if payment therefor has already been made, the Contractor shall refund to the Authority the amount so disallowed.

105.20 Project Acceptance. When, in the opinion of the Contractor, the Project has been completed, the Contractor shall so notify the Authority, in writing and the Authority will arrange for inspection. If the inspection is not found acceptable, the Authority will advise the Contractor as to the particular defects to be remedied before final acceptance will be made. Payment made to the Contractor before the final acceptance does not commit the Authority to acceptance of the Project. The Final Inspection will be made by the Authority and upon a satisfactory report, final acceptance of the Project will be made by the Chairperson of the Authority.

Partial Project acceptance of a unit of the Project may be made at the discretion of the Authority. When a unit or portion of the Project, such as a structure, interchange, or section of road or pavement is completed, the Contractor may request Final Inspection of that unit or portion. If the unit or portion has been completed in accordance with the Contract, the Authority may accept it as completed. Partial acceptance will not void or alter any of the terms of the Contract.

The Authority shall not be precluded or estopped by any measurement, estimate, certificate or approval of Work performed or Materials furnished made either before or after the Completion and acceptance of the Project and payment therefor, if such measurement, estimate or certificate be found to be in error or untrue, from showing the true amount and character of the Work performed and Materials furnished by the Contractor or from showing that any such measurement, estimate, certificate or approval is incorrectly made or untrue, that the Work or Materials do not conform in fact to the requirements of the Contract, or that said Work was

performed in a defective, unworkmanlike manner. The Authority shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate and payment made in accordance therewith, from recovering from the Contractor and his, her or its Surety such damages as it may sustain by reasons of the Contractor's failure to comply or to have complied with the terms of the Contract.

Neither the final acceptance by the Authority or any acceptance by any representative of the Authority, nor any payment made for the whole or any part of the Project, nor any extension of time granted the Contractor, nor any possession taken by the Authority, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or any right to damages herein provided. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

Guaranty Against Defective Work.

Before final payment is made as provided in Subsection 109.10, the Contractor shall furnish a Maintenance Bond to the Authority in a sum equal to five percent (5%) of the final Contract price. The Maintenance Bond shall be on the form furnished by the Authority and with Surety satisfactory to the Authority. The Maintenance Bond shall remain in full force and effect for a period of one (1) year from the date of final acceptance of the Project by the Authority. The Contractor shall also furnish a Contractor's Release of Liens before final payment is made.

Before semifinal payment is made following the suspension of Work as provided in Subsection 104.07 and Subsection 109.07, the Contractor shall furnish a Maintenance Bond in a sum equal to five percent (5%) of the estimated value of the Work completed prior to the time the Project was suspended, and the Maintenance Bond shall remain in effect for a period of one (1) year from the date of suspension.

The Maintenance Bond (in either case) shall provide that the Contractor guarantees to replace for said period of one (1) year all Work performed and Materials furnished that were not performed or furnished according to the terms of the Contract, and make good defects thereof, regardless of cause, which have become apparent before the expiration of said period of one (1) year.

If, in the judgment of the Authority, any part of the Project need be replaced, repaired or made good during the specified guaranty period for the reasons stated above, the Authority will so notify the Contractor in writing. If the Contractor refuses or neglects to start such Work within five (5) Calendar Days from the date of service of such notice or at such other time as the Authority may designate, or if the Contractor fails to complete such Work within the time prescribed by the Authority, then the Authority will have the Work done by others and the cost thereof shall be paid by the Contractor or the Surety.

Before the Surety is released from its Maintenance Bond, the Authority shall certify, in writing, that the foregoing obligations have been duly performed.

In an emergency, as determined by the Authority, the Authority reserves the right to immediately effect both temporary and permanent repairs, or arrange for others to effect such repairs, at the expense of the Contractor, and the Contractor agrees that in such event, the Authority will be reimbursed for such costs by the Contractor or by the Surety.

The obligations of the Contractor and Surety under the Maintenance Bond specified hereinabove shall not be construed as limiting, diminishing or in any way affecting the liability and obligations

of the Contractor and Surety under the terms of the Contract Bond, it being understood that the Maintenance Bond prescribed in this Subsection is solely intended to cover defective Work of a nature that would otherwise be repaired or replaced by maintenance forces.

The Contractor shall make good all damage to the Work which is the result of the use of materials (other than Authority-furnished materials), equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract and shall restore all disturbed work resulting from the same.

If within twelve (12) months after final acceptance of the Work there shall appear or be discovered any weakness, any deficiency, any failure, or any breaking down or deterioration caused by a deficiency in design, workmanship, or material furnished by the Contractor, and all other, materials, machinery, or equipment, damage to which was caused by such defective work, materials, machinery or equipment (herein called a "guarantee deficiency"), such guarantee deficiency shall be made good, at the Contractor's expense, to meet the requirements of the Specifications and this Contract.

Any work required to be performed pursuant to the provisions of this Subsection shall be carried out, if practicable and at the Authority's option, by the Contractor, or his, her or its subcontractor, if approved by the Authority. The Authority may however, have such work performed by another repair facility and in that event the Contractor shall be liable to the Authority for the cost thereof at the straight time commercial repair rate then-prevailing. The Contractor shall not be responsible for the work performed by such repair facility or the consequences thereof, nor shall the Contractor be responsible to again perform or correct, or again pay for, the performance or correction of such guarantee deficiency.

The Authority shall notify the Contractor in writing of any guarantee deficiency and damage, if any, to Material, machinery or Equipment for which the Contractor is liable pursuant to this Subsection within thirty (30) Days after its discovery, setting out in such notification the specific defect to the extent discovered, and shall request that it be corrected. Failure of the Authority to give timely notice to the Contractor of a guarantee deficiency after its discovery will not of itself constitute a waiver of the Authority's rights in respect of such guarantee deficiency; except that in no event shall Contractor have any liability under this Contract for a guarantee deficiency known or discovered by the Authority at any time during the guarantee period unless written notice of such guarantee deficiency is given the Contractor no later than thirty (30) Days after the end of the guarantee period.

Whenever practical, the Contractor shall be given an opportunity to inspect the guarantee deficiency and damage, if any, to the Material, machinery or Equipment within fifteen (15) Days after notification of the Contractor and before it is remedied.

This Subsection 105.20 shall survive termination of the Contract.

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

Unless otherwise noted, the Contractor shall not be entitled to any increase in the Awarded Contract Value or any payment or compensation of any kind from the Authority for direct, indirect, or consequential damages, including but not limited to costs of acceleration, loss of revenue, or overhead or profit, arising because of hindrance or delay, from any cause whatsoever, whether such hindrance or delay be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Instead, as its sole right and remedy with respect to such hindrance or delay, the Contractor shall be entitled only to an extension to the Contract Time.

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

A. **Allowable Direct and Indirect Expenses.** Only the additional costs associated with the following items will be recoverable by the Contractor for delay compensation:

1. Extended Field Overhead. Field overhead costs necessary for the prosecution of the Work during the delay period, as follows:
 - a. General Field Supervision. Such costs include but are not limited to general field supervision, assistants, watchmen, clerical and other field support staff. Compute these labor costs in accordance with Subsection 109.04, subpart D.1. For salaried personnel, calculate the rate of wage (or scale) actually paid by dividing the weekly salary by seven (7) days per week.
 - b. Field Office Facilities and Supplies. Such costs include but are not limited to field office trailers, tool trailers, office Equipment rental, temporary toilets, and other incidental facilities and supplies. Compute these costs on the basis of the actual added costs incurred by the Contractor to provide these services as a result of the delay.
 - c. Maintenance of Field Operations. Such costs include but are not limited to telephone, electric, water, and other similar expenses. Compute these costs on the basis of the actual added costs incurred to maintain these services as a result of the delay. These extended field overhead costs are not duplicative of those compensated in Subsection 109.04, subpart D.7.
2. Labor. For all necessary, non-salaried, idle labor that must remain on the Project during such periods of delay due to collective bargaining contracts or other reasons approved by the Engineer, compute the labor costs in accordance with Subsection 109.04, subpart D.1.
3. Bond, Insurance, and Tax. In accordance with Subsection 109.04, subpart D.2.
4. Equipment. For any idle Equipment other than small tools that must remain on the Project site during delays, the Contractor is to receive compensation at the rate calculated in Subsection 109.04, subpart D.4. Should it not be necessary for machinery or Equipment to remain on the Project during delays, the Contractor is to receive transportation costs to remove the machinery or Equipment and return it to the Project at the end of the delay period.
5. Materials. Costs for Material escalation due to the delay or the cost of storage of Materials due to the delay are recoverable. Obtain the Engineer's approval prior to storing any Material due to a delay.

6. Percentage Markups. An additional ten percent (10%) markup of the total of subparts A.1., A.2., A.3., and A.4. above will provide full compensation for home office overhead and any other costs attributed to the delay for which no specific allowance is herein provided. Payment under this Subsection constitutes full compensation for all items of expense related to such delay. No profit is allowed under this Subsection. The markup is not duplicative of those provided in Subsection 105.19, subpart E., Subsection 109.04, subpart D.6., and Subsection 109.04, subpart D.7.
7. Records. Payment will not be made for delays until the Contractor has furnished the Engineer with duplicate itemized statements of the cost as hereinabove specified and detailed as follows:
 - a. Name, classification, date, daily hours, total hours, rate, and extension for each worker and foreman.
 - b. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and Equipment.
 - c. Transportation costs.
 - d. Cost of bonds, property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; and social security taxes.

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

The Contractor's cost records pertaining to expenses under this subpart shall be open to inspection or audit by representatives of the Authority as provided in Subsection 105.19, subpart J.

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

105.22 Contractor's Responsibilities. The Contractor shall be responsible for reporting to the Authority any material omission or failure on the part of the Contractor, any Subcontractor or any Supplier to meet its schedule for completion or to perform its duties or responsibilities in connection with the Project, promptly as the same are observed by or otherwise become known to the Contractor. The Contractor shall also advise the Authority of any potential delays that may affect the ultimate completion of the Project on schedule, and shall make recommendations to the Authority, if necessary, as to the action to be taken to alleviate any potential delays.

There will be no change in the supervisory personnel assigned to the Project or in their time commitments to the Project without the prior written consent of the Authority. The Authority, in its sole discretion, shall have the right to require substitution of personnel assigned to the Project.

In addition to or in expansion of or elaboration on the Contractor's responsibilities as set forth in this Contract, it is agreed between the parties that the Contractor's responsibilities shall include:

- (a) Notifying the Authority of installation, testing and/or operational start-up times for such types or pieces of Equipment as may hereafter be specified by the Authority;
- (b) Furnishing the Authority with detailed documentation of the total cost of the Work at the completion of the project, separated into appropriate categories, classifications and codes and otherwise in a form approved by the Authority;
- (c) Preparing or obtaining from Subcontractor's brochures, guarantees, warranties, certificates of compliance and other agreements and instruments customarily prepared or obtained by a general contractor and/or the Contractor in connection with similarly situated projects; reviewing and commenting on the form of the foregoing and advising the Authority of any known discrepancies and deficiencies (the Contractor to cause any such discrepancies and deficiencies to be corrected); each guarantee, warranty or other similar instrument furnished shall name the Authority as direct beneficiary of the provisions thereof and the Authority shall have the right to enforce the same;
- (d) Maintaining at the Project site on a current basis all Contract Documents, including all Change Orders, Addenda, written interpretations and other modifications, as well as copies of all correspondence relating to the Project and a current marked-up set of the drawings, schedules, diagrams and Specifications (all of which documentation shall at all times be available for inspection by the Authority); and providing, following the completion of construction, a set of record drawings showing the Project "as built" both in full-size hard copy and on disks in PDF format; and
- (e) Training of Authority personnel as required or necessary for systems as supplied under the Contract.

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management of the Project, all of which shall be satisfactory to the Authority. The Authority and the Authority's representatives shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the project, and the Contractor shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

Section 106 - Control of Material

106.01 Source of Supply and Quality Requirements

106.02 Samples, Tests, and Referenced Specifications

106.03 Certification of Compliance

106.04 Manufacturing Plant Inspection

106.05 (Intentionally Omitted)

106.06 (Intentionally Omitted)

106.07 Storage and Handling of Materials

106.08 Unacceptable Materials

106.09 Disposal of Unacceptable Materials

106.10 Authority Furnished Material

106.01 Source of Supply and Quality Requirements. All Materials used shall meet the requirements of the Contract. All Materials for the Project shall be new materials furnished by the Contractor, unless otherwise specifically provided, and shall be subject to the approval of the Engineer.

The provisions of Subsection 102.14 notwithstanding, the Contractor shall, within ten (10) Calendar Days after the date of execution of the Contract by the Authority, inform the Engineer in writing from whom and where he proposes to obtain the Materials required for the first six (6) months of construction of the Project and thereafter advise the Engineer of proposed changes. The source of supply of each of the Materials to be incorporated into the Project shall be approved by the Engineer, preferably before the Material is ordered by the Contractor and at the very latest before delivery of such Material is started. The approval of the Engineer may be withdrawn at any time when it appears to the Engineer that the Materials no longer conform to Contract requirements after giving such approval. Subsequent to the submission of this initial list of sources of supply, for the duration of the Contract the Contractor shall notify the Engineer of new sources of supply at least thirty (30) Calendar Days in advance of the proposed shipment of Materials for such new sources.

Materials shall not be shipped to the site until inspected by the Engineer at their source and approved by the Engineer. Approval by samples alone may be permitted by the Engineer only so long as the Material conforms to the samples approved and it can be furnished at the time and in the quantity required by a producer equipped to furnish it in uniform quality and composition. Approval for a specific case or use does not imply approval for other cases or uses. Approved Materials which appear defective when received or which may have become damaged in any manner shall not be used until retested and reapproved.

All Materials proposed to be used may be inspected or tested at any time during their preparation and use. If, after inspection or testing, it is found that sources of supply which have been approved do not furnish a uniform product or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved Material from other approved sources. No Material which, after approval, has in any way become unfit for use shall be used in the Work.

Orders for Materials shall give detailed description of them and their intended use, manner of shipment, and proposed delivery date, and shall state the official designation of the Project on which they are to be used. Duplicates of orders shall be furnished to the Engineer at the time the order is placed. Material delivery slips shall show such information as may be prescribed by the Engineer.

In any item of construction, the sources, brands or types of Materials shall not be changed without the consent of the Authority. The Contractor's request for such changes shall be filed with the Engineer fifteen (15) Days in advance of such changes. The Contractor's notice shall state the name and address of the owner, the location of the proposed source, the method of shipment and the intended use of the Material. The Contractor shall also furnish this information for all Materials whenever placing an order therefor.

Wherever, on the Plans or in the Specifications, a particular brand or make of Material or a particular device or Equipment is shown or specified, such Material, device or Equipment is to be regarded only as a standard of acceptability. In such cases, other makes or brands of equal grade, suitability, availability and finish may be offered as an alternate by the Contractor for the Engineer's approval and utilized only if approved by the Engineer.

The foregoing provisions shall apply also with regard to requests by Subcontractors for the sources of the Materials they propose to use, such requests to be submitted through the Contractor.

Where the use of foreign Materials (i.e., materials mined, manufactured or produced outside the territorial limits of the United States of America) are not prohibited by the Supplemental Specifications or the Special Provisions, the Contractor may elect to utilize foreign Materials following notification to the Authority of the Contractor's intent to use such Materials, and if such Materials are furnished in accordance with the following requirements:

- (a) Materials manufactured, produced or mined outside the United States shall be delivered to approved locations within fifty (50) miles of the job site unless otherwise permitted, where they shall be retained until sampling and testing can be completed. Such sampling and testing shall be performed by testing organizations employed by the Authority.
- (b) Each lot of foreign Material shall be accompanied by a certificate of compliance, in accordance with Subsection 106.03. In addition, certified mill test reports shall be attached to the certificate of compliance for those Materials for which mill test reports are required and shall clearly identify the lot to which they apply. Mill test reports will be accepted only from those foreign manufacturers who have previously established the adequacy of their in-plant quality control to assure delivery of uniform Material. Adequacy of quality control shall be established, at the option of the Authority, by either submission of detailed written proof of adequate control or through an in-plant inspection by the Engineer. Travel and subsistence costs incurred by the Authority's representative for the performance of such in-plant inspection shall be reimbursed by the Contractor.
- (c) Foreign Materials will not be accepted which cannot be identified with mill test reports, certificates of compliance, and verified by the Authority's in-plant inspection and testing, as applicable.

106.02 Samples, Tests, and Referenced Specifications. All Materials furnished by the Contractor, Subcontractors and Suppliers for use in connection with the Project, are subject to test, at the Contractor's expense, or visual inspection, if testing is not required, for verification as to conformance to Contract requirements.

In general and unless otherwise provided, representative samples of Materials to be tested or inspected by the Authority will be selected at random by the Authority's Inspector from sources or supplies provided by the Contractor. The Contractor shall provide samples at no cost to the Authority and shall furnish all necessary assistance to the Inspector in selecting the samples. The Authority reserves the right to order that representative samples of certain Materials be selected by the Contractor and delivered to the Inspector or to an Authority approved Laboratory.

Samples required to be furnished or made available by the Contractor shall also be furnished or made available by the Contractor's Suppliers of Materials whenever tests and inspections are made at plants, quarries, mills, foundries, warehouses, shops or other points of manufacture, treatment, fabrication, assembly or storage.

Samples of Materials, units of manufactured items and prototypes shall be furnished in such quantities and numbers as may be required for establishing quality, classification, suitability, verification or performance and mix formulations.

Manufacturers furnishing pipe under the Specifications shall furnish all facilities necessary to carry out the tests required by the Specifications, at their own expense.

Methods of test shall be those prescribed or referred to in the Specifications for the various Materials. If no methods of test are provided for in the Specifications for a particular Material, that Material shall be tested in accordance with an appropriate AASHTO method or, if there be no appropriate AASHTO method of test, such Material shall be tested in accordance with an appropriate ASTM method of test.

Results of tests made with the Laboratory's apparatus, conforming to the requirements specified in the prescribed methods of tests, shall be official.

Vehicles and receptacles used for shipping and transporting Materials shall be strong, tight, clean and in good repair or Materials therein may be rejected. Receptacles shall be plainly marked with the name of the producer, kind of Material contained therein, net weight and grade. If the Material contained in the receptacle has been inspected at the point of production before shipment, the container shall be marked also with the lot number of the approved Material from which the content is taken, the date of approval and other pertinent information.

The sampling and testing of soils shall conform to the general requirements for sampling and testing Materials as specified above and to the requirements given below provided, however, that the following requirements shall govern in the event of any conflict or inconsistency.

Sampling requirements referred to herein for soils shall apply also to gravel or stone base courses or other granular Materials subject to compaction in road construction.

The Contractor shall determine, initially by means of proper sampling and laboratory tests, that soil materials from proposed sources will conform to the Specification requirements. Written notice of the proposed sources of the above-named materials shall be given to the Engineer by the Contractor after initial determination as specified above and not less than ten (10) Days prior to the time of their intended use. Then, before approving or disapproving a source, the Engineer will sample and test materials representative of that portion of the source which the Contractor intends to use.

Approval by the Engineer of a proposed source of soil materials shall not constitute approval of Materials delivered to the site of the Work from that source but shall be deemed as permission for the Contractor to select and use materials from that source only so long as they conform to the Specifications. The Contractor shall progressively determine, by proper sampling and laboratory tests, while the sources are in use, that Materials selected from approved sources will conform to the Specifications.

The final and governing determination of conformance or non-conformance with Specifications shall be based on sampling and testing of the Materials by the Engineer after they have been placed and compacted in the Work as specified or, if compaction is not specified, when they have been placed in accordance with the Plans and Specifications. All Materials in place in the Work which do not conform to the Specifications shall be removed and replaced with Materials which do conform thereto or their deficiencies shall be corrected.

The Contractor shall excavate test pits and provide such facilities as he, she or it may require in order to properly sample the source and shall, if the source be approved, remove any overburden which would contaminate the Material intended for use on the Project. If soil materials are obtained by dredging, the Contractor shall provide safe and adequate water transportation for the Engineer to and from the dredges or other boats and shall cooperate with the Engineer in every reasonable way to expedite inspection and sampling of the Materials.

106.03 Certification of Compliance. The Contract or the Authority will designate Materials that can be incorporated in the Work if accompanied by certificates of compliance from the manufacturer. The certificates of compliance shall state that the Materials or assemblies provided fully comply with the specification requirements of the Contract, and shall be signed by the manufacturer. Each lot of certified Materials or assemblies delivered to the Project must be accompanied by a certificate of compliance clearly identifying the Materials delivered and the specification requirement(s) satisfied.

Materials or assemblies used on the basis of certification of compliance may be sampled and tested by the Authority and, if determined not to be in conformance with Contract requirements, will be rejected in accordance with Subsection 105.03. The cost of such sampling and testing, regardless of outcome, shall be reimbursed by the Contractor.

106.04 Manufacturing Plant Inspection. The Engineer may inspect Materials at the acquisition or manufacturing source. Manufacturing plants may be inspected for compliance with specified manufacturing methods. Material samples will be obtained for testing for compliance with Material quality requirements.

In the event plant inspection is undertaken, the following conditions shall be met:

- A. The Engineer will have the cooperation and assistance of the Contractor and producer of the Materials;
- B. The Engineer will have full access at any time to all parts of the plant concerning the manufacture or production of the Materials being furnished;
- C. The Contractor shall arrange for an approved space for the use of the Inspector, with such space to be located conveniently near the plant;
- D. Provide and maintain adequate safety measures; and
- E. It is understood that the Authority reserves the right to retest all Materials which have been tested and accepted at the source of supply after the same have been delivered and to reject all Materials which, when retested, do not meet the requirements of these Specifications.

106.05 (Intentionally Omitted).

106.06 (Intentionally Omitted).

106.07 Storage and Handling of Materials. The Contractor, upon consultation with the Authority, shall arrange for delivery and storage, protection and security for all Materials, systems and Equipment which are a part of the Project, until such items are incorporated into the Project, including Authority-furnished Materials, systems and Equipment.

Materials shall be stored or stockpiled so as to insure preservation of their quality and fitness for the Work. Materials liable to damage or change in quality by the elements shall be stored in proper structures or in such other manner as may be necessary to protect them from damage. Materials shall be kept clean and free from foreign matter of any kind before, while and after being placed in the finished Work.

Metalwork shall be stored on dunnage or otherwise placed above ground and protected against contact with rising water or mud.

Unless otherwise directed, granular Materials shall be stockpiled on hard, clean surfaces, shall be placed in stockpiles in horizontal layers not exceeding three feet in depth and when so required, shall be suitably covered.

The locations for and methods of storing Materials shall at all times meet with the approval of the Engineer. Any Materials improperly stored will not be approved for use.

An approved portion of the Right-of-Way may be used for the storage of Materials and the Contractor's Equipment. Additional storage space required shall be provided at the Contractor's expense and option. Private property shall not be used for storage purposes without written permission of the owner or lessee. If requested, copies of such written permission shall be furnished to the Engineer.

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

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

106.09 Disposal of Unacceptable Materials. All waste materials removed by earthwork operations shall become the property of the Contractor and shall be removed from the Project or otherwise disposed of as specified, unless otherwise explicitly stated in the Contract. Unless specific disposal sites are designated on the Plans, the Contractor shall procure disposal sites. Such disposal sites shall be submitted to and approved by the Engineer. No areas that are designated as wetlands will be permitted for use as disposal sites. The submittal shall include a plan of the disposal area, proposed sediment and erosion control devices, existing and proposed final contours, and proposed security measures. All permit requirements, such as those required by the Department of Natural Resources and Environmental Control (DNREC) and the U.S. Army Corps of Engineers, shall be met by the Contractor when preparing and utilizing off-site disposal areas. The Contractor shall submit a similar proposal for use of designated disposal sites if such detail is not included in the Contract Documents. Costs for preparing these plans are incidental to Section 201 of the Standard Specifications. For disposal sites designated in the Plans, payment will be made separately under applicable bid items for all necessary erosion and sediment controls, seeding, and mulching. For Contractor-procured disposal sites, such costs are incidental to Section 201 of the Standard Specifications. The Authority will not consider any delays or monetary claims of any nature resulting from the Contractor's failure or difficulty in finding the necessary disposal sites.

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

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

Section 107 - Legal Relations and Responsibility to the Public

- 107.01** Laws, Ordinances and Regulations
- 107.02** Permits, Licenses and Taxes
- 107.03** Patented Devices, Materials, and Processes
- 107.04** Contractor's Responsibility for Utility Property and Services
- 107.05** Federal Aid Participation
- 107.06** Construction Safety, Health, and Sanitary Standards
- 107.07** Public Convenience and Safety
- 107.08** Use of Explosives
- 107.09** Protection and Restoration of Property
- 107.10** Responsibility for Damage Claims
- 107.11** Furnishing Right-of-Way
- 107.12** No Personal Liability
- 107.13** No Waiver of Legal Rights
- 107.14** Hazardous Material
- 107.15** Ownership and Use of Documents; Confidentiality
- 107.16** Equal Employment
- 107.17** Labor Relations
- 107.18** Security

107.01 Laws, Ordinances and Regulations. The Contractor shall observe and comply with and cause the Work to be performed in accordance with all applicable governmental laws, rules, codes, regulations and requirements, including, without limitation, federal, state and local environmental and safety laws and regulations which are required of the Authority.

107.02 Permits, Licenses and Taxes. Except as otherwise hereinafter provided, the Contractor shall procure all required permits and licenses, pay all charges and fees therefor and shall give all notices necessary and incident to the due and lawful prosecution of the Project.

Before the Contractor performs dredging or excavation within tidal waterways for the procurement of Materials or performs therein other work of his, her or its own, when such work is not part of the permanent Work provided for in the Contract, he, she or it shall advise the Engineer, U.S. Army Corps of Engineers and any other Federal or State agency having jurisdiction. The Contractor shall procure all necessary permits for such work from the above-named agencies and shall comply with the rules and regulations in the performance of the above-mentioned work.

For all permanent construction prescribed in the Contract, the necessary official permits and consents from the proper agencies will be procured and all charges therefor will be paid by the Authority. However, the Contractor shall advise such agencies of their proposed operations and obtain their cooperation and such supplemental permission as may be necessary.

Passes will not be issued to the Contractor, their subcontractors or suppliers for the toll-free use of any existing toll facility operated by the Authority. The Contractor shall include the cost of all such expenses in the prices bid for the various items scheduled in the Contract Documents.

Under date of February 27, 1967, the purchasing agent of the Authority issued the following notice that the Authority is exempt from New Jersey sales taxes on purchases from New Jersey merchants:

TO ALL VENDORS FURNISHING MATERIALS OR SERVICES OR BOTH TO
THE DELAWARE RIVER AND BAY AUTHORITY, CAPE MAY-LEWES FERRY
OR DELAWARE MEMORIAL BRIDGE

The Delaware River and Bay Authority, formed by a compact between the State of Delaware and the State of New Jersey to operate the Delaware Memorial Bridge and the Cape May-Lewes Ferry, is exempt from the payment of New Jersey Sales Tax on purchases from New Jersey merchants.

The following are pertinent excerpts from the General Information Bulletin - New Jersey Sales and Use Tax Act -Chapter 30, Laws 1966:

Page 9 - Item 8a:

“The State of New Jersey or any of its agencies, instrumentalities, public authorities, public corporations (including those created pursuant to agreement or compact with another state) or political sub-divisions, when it is the purchaser, user or consumer or when it sells services or property of a kind not ordinarily sold by private persons.”

Page 11 - Item 5:

“Organizations described in Section 8a need only furnish purchase orders on their letterhead to claim exemption.”

107.03 Patented Devices, Materials, and Processes. The Contractor and the Surety shall hold and save harmless the Authority, its commissioners, officers, agents and employees, in accordance with the terms of these Specifications, from any and all claims because of the use of any patented design, device, Material, or process in connection with the Work agreed to be performed under this Contract. The foregoing indemnification shall survive termination of the Contract. Any patent agreement between patentee and the Contractor shall be furnished to the Authority.

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

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

Fire hydrants on or adjacent to the highway shall be kept accessible to fire apparatus at all times and no Material or obstruction shall be placed within fifteen feet (15’) of any such hydrant. Work shall be left entirely accessible at all points to fire apparatus at all times. Whenever any Work is done in the area of a fire hydrant or whenever a fire hydrant is relocated or installed, the center of the hose outlet shall be a minimum of eighteen inches (18 in.) above the final grade directly beneath the hose outlet. The breakaway flange at the bottom of the hydrant shall be set zero inches to four inches above the ground.

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

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

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

The Contractor shall provide and maintain in a neat and sanitary condition, properly secluded, such accommodations for himself and his employees as may be necessary to comply with the regulations of the State Departments of Health and other bodies having jurisdiction. Necessary conveniences, properly secluded, shall be provided and maintained for the use of and to the satisfaction of the Authority and sanitary authorities. No public nuisance will be tolerated.

The Contractor's personnel will not be permitted to use the sanitary provisions within any Administrative Complex of the Authority or any other Authority property.

107.07 Public Convenience and Safety. The Contractor shall maintain a safe work site at all times and be prepared to make repairs as needed after normal working hours in the case of an emergency. If the Authority is unable to contact the Contractor to make these repairs then Authority maintenance forces or a third party contractor may be used to make such repairs. The cost for this work shall be calculated according to Subsection 109.04 subpart (D) for all Authority personnel involved or third party contractor, including vehicles, equipment and materials needed. This cost will be deducted from money due the Contractor under the Contract.

The Contractor shall conduct his, her or its Work with the least possible obstruction to the traveling public. The convenience of the public and of the residents adjacent to the Project and the protection of persons and property are of first importance and shall be provided for by the Contractor in an adequate and satisfactory manner. The Contractor shall provide and maintain ingress and egress for all residences and places of business located within the construction limits. Adequate temporary crossings shall be constructed and maintained where access to adjacent property is desired, whether for convenience or fire protection. All fire hydrants shall be kept accessible at all times.

Trucks hauling materials shall have tight tail gates and shall be loaded with adequate freeboard of not less than three inches, without precarious cones or piles of material.

The Contractor shall provide for prompt removal from existing Roadways of all dirt and other materials that have been spilled, washed, tracked or otherwise deposited thereon by hauling and other operations whenever the accumulation is sufficient to cause the formation of mud, interfere with drainage, obstruct or clog drainage systems, damage pavements or create a traffic hazard.

The Contractor shall employ construction methods and means that will keep flying dust to the minimum. The Contractor shall provide for the allaying of dust on the Project and on roads, streets and other areas immediately adjacent to the Project limits, wherever traffic or buildings that are occupied or in use are affected by such dust caused by hauling or other operations. The materials and methods used for dust allaying shall be subject to the approval of the Engineer.

Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of applicable laws, building and construction codes, and the rules and regulations of the Delaware and New Jersey Departments of Labor, as applicable, shall be observed. Machinery, Equipment and other hazards of whatsoever character shall be guarded in accordance with the safety provisions of the AGC, to the extent that such provisions are not inconsistent with applicable Federal, state and local laws and regulations.

If any operation, practice or condition during the course of the Work is deemed by the Authority to be unsafe, the Contractor shall take corrective action when notified in writing by the Authority. However, where in the opinion of the Authority, any operation, practice or condition endangers persons or property, it shall be discontinued and adequate remedial action taken before the affected part of the Work is resumed.

107.08 Use of Explosives. Explosives shall not be brought within the Project limits or onto property under the jurisdiction of the Authority without the prior written approval of the Executive Director.

When permission is granted to bring explosives thereon, they shall be stored safely under lock and key. The storage places shall be marked conspicuously "DANGEROUS EXPLOSIVES" and be in the care of a competent watchman at all times. The storing and handling of explosives and highly inflammable Materials shall conform to state and local regulations relating thereto. Proper means shall be used to avoid blasting damage to public and private property. Flagmen shall be provided, when directed, in order to warn and keep traffic from the danger area and all persons within the danger area shall be warned and given time to withdraw.

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

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

The Contractor shall notify each public utility company having structures in proximity to the site of the Work of its intention to use explosives.

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

107.09 Protection and Restoration of Property. The Contractor shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the Project, which are not designated on the Plans for repair, removal or reconstruction. The Contractor shall exercise the precaution necessary to prevent damage to underground structures and shall protect carefully from disturbance or damage all land monuments and property markers until an authorized representative of the Authority has witnessed or otherwise referenced their location and shall not remove them until so directed. Any disturbed land monument and/or property marker shall be located and reset by registered land surveyors, at the Contractor's expense.

The Contractor shall not injure or destroy trees or shrubs outside the limits of the graded Roadway Subsection, nor remove or cut them without proper authority.

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

In case of the failure on the part of the Contractor to restore such property or make good such damage, the Authority may, upon forty-eight (48) hours' notice, proceed to repair, rebuild or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted from any monies due or which may become due the Contractor under the Contract.

107.10 Responsibility for Damage Claims. The Contractor hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of the Contractor or otherwise, and to all property caused by, resulting from, arising out of or occurring in connection with the execution of the Work; and if any claims for such damage or injury (including death resulting therefrom) be made or asserted, whether or not such claims are based upon the Authority's alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of the Authority, the Contractor agrees to indemnify and save harmless the Authority, its commissioners, officers, agents, servants and employees from and against any and all such claims and further from and against any and all loss, costs, expense, liability, damage or injury, including legal fees and disbursements, that the Authority, its commissioners, officers, agents, servants or employees may directly or indirectly sustain, suffer or incur as a result thereof and the Contractor agrees to and does hereby assume, on behalf of the Authority, its commissioners, officers, agents, servants and employees, the defense of any action at law or in equity which may be brought against the Authority, its commissioners, officers, agents, servants or employees upon or by reason of such claims and to pay on behalf of the Authority, its commissioners, officers, agents, servants and employees, upon its demand, the amount of any judgment that may be entered against the Authority, its commissioners, officers, agents, servants or employees in any such action.

The Contractor also hereby assumes entire responsibility and liability for and shall, to the same extent as specified above, further indemnify and save harmless the Authority, its commissioners, officers, agents and servants from all suits, claims and actions of any kind or character whatsoever which may be brought or instituted by any Subcontractor, materialman or laborer who has performed Work or furnished Materials in or about the Project or by, or on account of, any claims or amount recovered for any infringement of patent, trademark or copyright, or for any violation of such laws, ordinances, regulations, orders or decrees, whether by the Contractor himself, herself or itself or by any of his employees, Subcontractors or Suppliers, whether or not such suit action, claims or amounts recovered are based upon the Authority's active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of the Authority. In the event that any such claims, loss, costs, expense, liability, damage or injury arise or are made, asserted or threatened against the Authority, its commissioners, officers, agents, servants or employees, the Authority shall have the right to withhold from any payments due or may become due to the Contractor an amount sufficient in its judgment to protect and indemnify it and its commissioners, officers, agents, servants and employees from and against any and all such claims, loss, costs, expense, liability, damage or injury, including legal fees and disbursements or the Authority, in its discretion, may require the Contractor to furnish a security bond satisfactory to the Authority guaranteeing such protection, which bond shall be furnished by the Contractor within five (5) Days after written demand has been made therefor.

The forgoing indemnification provision shall survive termination of the Contract.

107.11 Furnishing Right-of-Way. The Authority will be responsible for securing all necessary Rights-Of-Way in advance of construction. Any exceptions will be indicated in the Contract. If work is to be performed on, over, under or adjacent to railroad property, the Contractor may be required to indemnify and save harmless the railroad company in connection with such work. The Contractor shall be responsible for acquainting himself, herself or itself, prior to bidding, with all requirements that the railroad company may impose.

107.12 No Personal Liability. In carrying out the provisions of this Contract or in exercising any power or authority granted them by their position, there shall be no liability upon the Commissioners of the Authority, the Executive Director, the Engineer, any Authority employees or any consulting engineers that may be engaged for the Project by the Authority and their authorized representatives either personally or as officials of the Authority, it being understood that in such matters, they act as agents and representatives of the Authority.

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

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

107.14 Hazardous Material. If any abnormal condition is encountered or exposed that indicates the presence of a hazardous material or toxic waste, construction operations shall be immediately suspended in the area and the Engineer notified. Work shall be continued in other areas of the Project where such abnormal conditions have not been encountered or exposed, unless otherwise directed by the Engineer.

Abnormal conditions include but are not limited to the following: presence of barrels or drums, chemical or noxious odors, stained or contaminated soil, sheen or contamination of or on surface or ground water, excessively hot earth, smoke, or any other condition that indicates a hazardous material or toxic waste. Such conditions shall be treated with extreme caution.

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

Contractor shall be responsible for abnormal conditions created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

To the fullest extent permitted by laws and regulations, Contractor shall indemnify and hold harmless the Authority and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to abnormal conditions created by Contractor or by anyone for whom Contractor is responsible or for any exacerbation by Contractor or anyone Contractor is responsible for of an existing abnormal condition shown on technical data, drawings, or specifications, or in Contract Documents. Nothing in this Paragraph shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence. The foregoing indemnification shall survive termination of the Contract.

107.15 Ownership and Use of Documents; Confidentiality. Drawings prepared by the Contractor (and all models, plans, calculations, specifications and other work product of the Contractor in connection with the Project and all related computer disks and electronic data) are and shall remain the property of the Authority, whether the Project is fully executed or not.

The Contractor agrees that all drawings, specifications, plans, designs, technical information, forecasts and other materials received by the Contractor from the Authority in connection with this Contract shall be accepted and treated as proprietary information that has a substantial commercial value to the Authority, and that the Contractor will not use or disclose any such information in any manner except to the extent that such use or disclosure may be necessary for the performance of services or the Work under this Contract. Upon completion of the Project, or at any time requested by the Authority, the Contractor shall return to the Authority all such information, including any copies made thereof by the Contractor (provided, however, that the Contractor, and each Subcontractor holding a subcontract with the Contractor, may retain one file copy of all drawings, Specifications, Addenda, Change Orders, Supplemental Agreements and like items relevant to their portion of the Work).

The term "Confidential Information" as used herein means information, data and experience of the Authority relating to the Project, whether of a technical, engineering, security, operational or economic nature, supplied to or developed or obtained by the Contractor, in writing, orally, or by observation (and, without limitation, includes all materials and information referenced above), except information that becomes known to the public at large through general publication by the Authority. The Contractor agrees:

(a) To make no use whatsoever of the Confidential Information except for the direct benefit of the Authority and accordingly, without limiting the generality of the foregoing, not to use such Confidential Information in connection with any other work performed by the Contractor either for itself or for any other person or entity;

(b) Not to reveal any Confidential Information to third parties (excepting disclosures to Subcontractor to the extent necessary for the performance of work under this Contract), and accordingly, without limiting the generality of the foregoing, not to supply any such Confidential Information to any prospective customer of the Contractor;

(c) To keep all such Confidential Information strictly secret and confidential and to that end, without limiting the generality of the foregoing, to cause all written material relating to or containing such Confidential Information, including all sketches, drawings, reports and notes, and all copies, reproductions, reprints and translations, to be plainly marked to indicate the secret and confidential nature thereof and to prevent unauthorized use or reproduction;

(d) To take reasonable precautions in order that the secrecy of such Confidential Information is preserved among the Contractor's employees having access to any portion of such Confidential Information, and to assume the responsibility that such employees will preserve the secrecy of such Confidential Information with respect to third parties; and

(e) Except as otherwise provided herein, to return all written material of the type described within this Subsection to the Authority.

The Authority specifically prohibits the photographing of any portion of the Work by the Contractor for publicity or advertising or for any other purpose without the written consent of the Authority.

The Contractor shall not release information on the Project or the subject matter of this Contract to the public without the written consent of the Authority. The Contractor shall not use the name or marks of the Authority without express written authorization by the Authority.

107.16 Equal Employment. The Contractor and all Subcontractors of any tier shall maintain employment policies as follows: the Contractor and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability or age. The Contractor and all Subcontractors shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability or age. Such policies shall be applicable to employment, upgrading, demotion or transfer, recruitment or recruitment advertisement, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor and each Subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth its policies on non-discrimination. The Contractor and all Subcontractors shall, in all solicitations or advertisements for employees placed by them, or on their behalf, state that all qualified applications will receive consideration for employment without regard to race, religion, color, sex, national origin, disability or age.

107.17 Labor Relations. The Contractor shall perform the Work, whether at the Project site or elsewhere, at all times with a sufficient work force to carry out the Contractor's obligations in full force, in an efficient and timely manner, and in accordance with the agreed upon Project schedule. The Contractor shall only permit the Work to be performed by fully competent, skilled and responsible workers, all of whom shall work in harmony with other workers performing labor or services at the Project. The Contractor shall use its best efforts not to employ or permit the employment of any labor or sublet any portion of the Work to any Subcontractor if such employment or allocation is likely to cause strikes, work stoppages, delays, suspension of work or other interference with the smooth progress of the Work under the Contract Documents or other Work being performed on the Project by union or non-union labor. Should a labor dispute occur, the Authority shall have the right to initiate and maintain proceedings with any appropriate agency or administrative body or in any court of competent jurisdiction or to direct the Contractor to promptly take all such action as may be necessary or appropriate as a consequence of the labor dispute. If delay occurs as a result of such labor dispute, then the Contractor, to the fullest extent permitted by law, shall indemnify, defend and hold harmless the Authority from all claims, damages, losses and expenses (including reasonable attorneys' fees and disbursements) arising out of or resulting from the concerned labor dispute.

Further, upon the occurrence of a labor dispute which threatens adversely to affect the progress or cost of the Work, the Authority reserves the right (i) to suspend the Work of the Contractor or to direct the suspension of the Work of any Subcontractor of any tier or (ii) in the Authority's sole discretion and without prejudice to any other remedies it may have to terminate the Contract, or (iii) to direct the Contractor to terminate any subcontract, upon forty-eight (48) hours prior written notice to the Contractor. Such suspension or termination shall be deemed (i) in the case of any Subcontractor of any tier, to be for "cause" (whether or not the particular Subcontractor is directly involved in the concerned labor dispute) and (ii) in the case of the Contractor, to be for "cause" if the Contractor shall not have used reasonable care to avoid, terminate or control the labor dispute or is otherwise in default of its obligations hereunder. The Contractor shall cause the provisions of this subparagraph to be inserted in substantially the same form in all subcontracts to the end that the Authority and the Contractor shall have the rights herein set forth with respect to each Subcontractor of any tier.

107.18 Security. The Contractor will be required, at no cost to the Authority, to comply with current Authority Contractor Personnel and Vehicle Identification Card issuance/wear/display/turn-in policies. All Contractor personnel, including Subcontractors and materialmen, will be required to wear Authority-issued picture Contractor identification cards in a visible manner while working on Authority premises. In addition, Contractor's vehicles will be required to display in a visible and approved manner an Authority issued vehicle permit. At the conclusion of services rendered, all Authority-issued Contractor identification cards and vehicle permits must be turned back in to designated Authority personnel before final contract payment can be made. Liquidated damages of five hundred dollars (\$500.00) per Identification Card will be assessed for every Identification Card not turned in to the Authority upon request. All Contractor personnel and equipment are subject to search at any time while on the Authority's premises. The Contractor may be required to conduct security and background checks on its employees, Subcontractors and materialman if requested by the Authority.

The Contractor may be required, at no cost to the Authority, to comply with all of the Transportation Worker Identification Credential (TWIC) requirements pursuant to COMDTPUB 16700.40 Navigation and Vessel Inspection Circular 03-07 at all times while work is progressing on this Contract.

If TWIC regulations are applicable to the Project, the Authority will not be providing any TWIC escort services for work on the Contract. The Contractor will be required to submit a TWIC plan at the same time as the proposed project schedule is submitted. The TWIC plan must identify the total number of workers who will be performing work on this Contract and the number of TWIC card holders that will be required to maintain the appropriate TWIC ratio for the Contractor to perform its duties under the Contract unescorted. The Contractor will be required to submit a photocopy of the front side of the TWIC card for every person who will be required to have one while the Work is in progress. The Contractor will not be provided with the Notice to Proceed until the TWIC requirements have been received and approved by the Project Engineer.

The Contractor will be responsible for any and all fines incurred due to any and all violation(s) of the TWIC regulations by any and all of the Contractor's employees, agents or Subcontractors performing Work under this Contract.

Section 108 - Prosecution and Progress

- 108.01** Subletting of Contract
- 108.02** Notice to Proceed
- 108.03** Performance and Progress
- 108.04** Progress Schedules
- 108.05** Traffic Requirements and Contractor's Operations
- 108.06** Character of Workers and Equipment
- 108.07** Extension of Contract Time
- 108.08** Failure to Complete on Time
- 108.09** Schedule of Liquidated Damages
- 108.10** Default of Contract
- 108.11** Termination of Contract
- 108.12** Termination of Contractor's Responsibility

108.01 Subletting of Contract. Only the Awarded Contract Value and the value of subcontracted Work approved by the Authority will be used to compute the percentage of subcontracted Work.

The Contractor shall at all times and in all respects be the party primarily responsible to the Authority for the performance of the Contract. The Contractor shall not sell, transfer, assign or otherwise dispose of to anyone, his, her or its obligations to the Authority.

Except by special written consent of the Authority to do otherwise, the Contractor shall perform with his, her or its own organization and with the assistance of workmen under his, her or its immediate supervision, Work of a value of not less than thirty percent (30%) of the Awarded Contract Value for the Contract.

A Contract Award shall not be construed to be an approval of any subcontract, supply contract or any associated terms. The Subcontractor agrees, as a condition of entering into a subcontract on the Project, that he, she or it shall make no claim whatsoever against the Authority or its commissioners, officers, servants, agents or employees for any Work performed or thing done by reason of said subcontract or for any other cause whatsoever that may arise by reason of the relationship created between the Contractor and Subcontractor by the subcontract. The Authority will not consent to the making of any subcontract unless the proposed Subcontractor furnishes a statement to the effect that said Subcontractor is acquainted with all the provisions of the Contract and agrees thereto.

The Contractor shall, in all events, be responsible for all acts or omissions of any Subcontractor and shall be liable for all damage caused by the acts or omissions of any Subcontractor.

108.02 Notice to Proceed. Following the Contract execution, the Engineer may schedule a preconstruction meeting. Prior to the preconstruction meeting, the Contractor shall submit the progress schedule per Subsection 108.04. The Engineer will issue to the Contractor a Notice to Proceed which will stipulate the date on or before which the Contractor is expected to begin Work. The date specified in the Notice to Proceed will be at least ten (10) Calendar Days subsequent to the date of issuance of the Notice to Proceed. No Work is to be started before receipt of the Notice to Proceed. The specified Contract Time shall begin on the Day the Work actually starts or on the date stipulated in the Notice to Proceed, whichever is earlier.

108.03 Performance and Progress. The Contractor shall begin Work no later than the date stipulated in the Notice to Proceed.

Contract Time will begin as specified in Subsection 108.02 and continue each and every day shown on the calendar until the final acceptance by the Authority. Work shall be accomplished during the standard five (5) day work week, Monday through Friday, excluding Holidays, unless otherwise approved by the Engineer. Contractor shall submit a written request to the Engineer for approval to work on Saturdays, Sundays and/or Holidays. Such request shall be made at least three (3) weekdays prior to the Saturday, Sunday or Holiday for which permission to work is requested.

The Contractor shall be required to mobilize his, her or its forces and Equipment and schedule his, her or its work such that Work will be prosecuted on a full-time basis. If the Contractor is approved to work at night, then he, she or it shall supply lighting at no additional cost to the

Authority. The level of noise at night shall not exceed forty (40) decibels at the Authority's property line.

The Contractor's work schedule shall include all multiple shifts or weekend operations necessary to complete the Work on time. The schedule shall be submitted to the Authority for approval. If the Authority finds the schedule in conflict with operations or safety, the Contractor shall modify the schedule to concur with the Authority's directives.

The Contractor shall prosecute the Work with such forces, Materials and Equipment as the Authority considers necessary in order to complete the Work within the prescribed Contract Time. Whenever either the working force or the Equipment is, in the opinion of the Authority, inadequate or insufficient to insure completion within said Contract Time, the Authority may order the Contractor to correct the deficiency and the Contractor shall comply with such order.

The Work shall proceed to completion without interruption, except as provided in Subsection 104.07.

The Contractor shall be responsible for promptly reporting to the Authority any material omission or failure on the part of the Contractor, any Subcontractor or any supplier to meet its schedule for completion or to perform its duties or responsibilities in connection with the Project, as the same are observed by or otherwise become known to the Contractor. The Contractor shall also advise the Authority of any potential delays that may affect the ultimate completion of the Project on schedule, and shall make recommendations to the Authority, if necessary, as to the action to be taken to alleviate any potential delays.

108.04 Progress Schedules. The Contractor shall provide a Critical Path Method ("CPM") schedule (developed on scheduling software, such as Gantt, Primavera or other Authority approved scheduling software) showing the bar chart and the critical path for each of the individual items of the Contract. The CPM schedule shall show all major activities of Work and their relationships to each other. The CPM schedule shall be submitted to the Engineer within ten (10) Days of receipt of the fully executed Contract and a minimum of two (2) weeks before Work commences. The schedule shall show that the Work can be completed within the time allotted. If the schedule is rejected or needs to be revised, the Contractor shall have seven (7) Days to complete/submit a new schedule. A Notice to Proceed will not be issued until the Contractor's baseline CPM schedule is approved by the Engineer. The Contractor shall adhere to the schedule unless written approval is given by the Engineer.

The Contractor will be required to have a representative attend the Authority's weekly progress meetings to report on progress with respect to the schedule, including the Work completed and the Work remaining for the Contract. At these meetings, Work will be forecasted three weeks in advance.

For payment, an updated CPM schedule will be required on a monthly basis. Payment for the Contractor's Work will be predicated upon receipt of the updated schedule.

The Contract duration, prepared by the Authority, accounts for adverse weather days. The Contractor shall take into account adverse weather days as part of his, her or its CPM schedule(s) submission. The number of adverse weather days shall be clearly indicated in the Contractor's CPM schedule. No consideration for time extension shall be given for adverse weather.

An adverse weather day is defined as daily precipitation equal to or exceeding ¼ inch and/or maximum daily temperature not exceeding 32°F as reported by the New Castle Airport.

It is the Contractor's responsibility to provide the manpower, Materials and Equipment necessary to complete the Work in the prescribed time frame as directed in this Contract.

The Contractor's schedule shall reflect the Authority's concern regarding the duration of lane closure time for all areas. The Engineer's decision regarding the duration of each lane closure is final.

If the Contractor fails to submit his, her or its schedule on the dates set forth or does not adhere to the schedule (except for inclement weather or changes approved by the Engineer), the Authority will hire a consultant to produce a schedule as specified above and will deduct the cost from the monies due to the Contractor.

108.05 Traffic Requirements and Contractor's Operations. The Contractor shall conduct Work at all times in such a manner and in such sequence as will ensure the least interference with traffic. The Contractor shall give due regard to the location of detours and to the provisions for handling traffic. The Contractor shall not open up Work to the prejudice or detriment of Work already started, and the Engineer may require the Contractor to finish a section on which the Work is in progress before Work is started on any additional sections.

108.06 Character of Workers and Equipment. The Contractor shall employ only competent and efficient persons. Whenever, in the opinion of the Engineer, any employee is careless or incompetent, obstructs the progress of the Work, acts contrary to instructions of the superintendent or foreman, or conducts him or herself improperly, the Contractor shall, upon the request of the Engineer, discharge the employee from the Work and shall not again employ that person on the Contract or any other contract for the Authority, except with the written consent of the Engineer.

All machinery and Equipment owned or controlled by the Contractor that is proposed to be used by the Contractor on the Work shall be of sufficient size and capacity and such mechanical condition as to meet the requirements of the Work and to produce a satisfactory quality of Work. Equipment used on any portion of the Project shall be such that no injury to the Roadway, adjacent property or other highways results from its use.

Only equipment in good and proper working condition shall be used on the Project. Sufficient and adequate equipment shall be used to produce a satisfactory quality of work and to insure the completion of the Project within the time specified. The measure of the capacity and efficiency of machinery and Equipment shall be its actual performance on the Work. The Equipment shall be operated so as not to damage public or private property. When a specific type or character of Equipment is called for, it shall be provided and used. All Equipment shall be subject to the approval of the Authority.

If the Contractor or his, hers or its Subcontractors do not own all or part of the equipment required, a written statement shall be submitted by the Contractor or his, hers or its Subcontractors, respectively, containing the name and address of the owner or owners, stating that an agreement has been made to lease or loan the equipment and that in event of default, as set forth in Subsection 108.10, the Authority has the right to take over and use such equipment or cause it to be used for completing the Project.

When methods and/or Equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor is free to use any methods and/or Equipment that it demonstrates to the satisfaction of the Engineer will accomplish the Contract Work in conformity with the requirements of the Contract.

When the Contract specifies that the construction be performed by the use of certain methods and/or Equipment, such methods and/or Equipment shall be used unless others are authorized by the Engineer. If the Contractor desires to use a method and/or type of Equipment other than those specified in the Contract, the Contractor may request authority from the Engineer to do so. The request shall be in writing and shall include a full explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing construction Work in conformity with Contract requirements. If, after trial use of the substituted methods and/or Equipment, the Engineer determines that the Work produced does not meet the Contract requirements, the Contractor shall discontinue the use of the substitute method and/or Equipment and shall complete the remaining construction with the specified methods and/or Equipment.

The Contractor shall remove the deficient Work and replace it with Work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made to the Unit Price for the Contract Items involved, or in Contract Time, as the result of authorizing a change in methods and/or Equipment under these provisions unless it is as a credit or a VEP.

All Equipment shall be subject to the approval of the Authority.

108.07 Extension of Contract Time. Extension of time(s) stipulated in the Contract for completion of the Project or portions thereof will be made if and as the Authority may deem proper, when such an extension of time is granted under the terms of a Change Order or Supplemental Agreement, when the Work is suspended as provided in Subsection 104.07, or when the Work of the Contractor is delayed on account of conditions, other than daily weather conditions, which in the opinion of the Authority warrant such extension; provided, however, that no extension on account of delay will be granted unless notice of such delay and of the Contractor's intention to claim an extension of time be given to the Authority, in writing, within seven (7) Calendar Days after the beginning of such delay, said notice giving complete information of the nature, cause and probable extent of the delay.

Extensions of time shall be binding only when issued in writing by the Authority.

No extension of time will be granted by reason of labor disputes to the extent that such disputes could reasonably have been avoided by appropriate scheduling of Subcontractors, trades or the like at the Project site, appropriate action for the establishment of multiple gating at the Project site, recourse to the NLRB or appropriate judicial action to restrain labor disturbances, or other control procedures normally employed by construction managers or Contractors in the management of "merit shop" projects in the state of Delaware.

No consideration for time extension shall be given for adverse weather.

108.08 Failure to Complete on Time. All work under the Contract shall be completed within the duration prescribed in the Special Provisions. In addition, interim completion requirements may also be given for various portions of the Work. The Contractor shall arrange to provide sufficient workmen, Equipment and Materials and to prosecute the Work in such sequence as

will insure completion thereof within the duration(s) stated. For each Calendar Day that Work remains uncompleted after the Contract Time has expired or beyond the completion date established by the Contract, the sum specified in Subsection 108.09 will be deducted from any money due the Contractor. This sum shall not be considered and treated as a penalty but as Liquidated Damages due the Authority by reason of inconvenience to the public, added cost of engineering and supervision, and other extra expenditures of public funds due to the Contractor's failure to complete the Work on time. Any adjustment of the Contract Time for completion of the Work granted under Subsection 108.07 will be considered in the assessment of Liquidated Damages. Each and every consecutive Calendar Day, including Saturdays, Sundays, and Holidays, shall be included in the computations for the assessment of Liquidated Damages.

The Contractor shall become liable for Liquidated Damages for delays commencing from the date on which the Contract Time, as adjusted by Subsection 108.07, shall expire.

Permission for the Contractor or Surety to continue and finish Work after the Contract Time and approved extensions have elapsed shall not waive the Authority's rights under the Contract.

The Authority may waive such portions of the Liquidated Damages as may accrue after the Work is substantially complete and is in a condition for safe and convenient use by the traveling public.

Payment of Liquidated Damages will be deducted from payments otherwise due the Contractor or be made by direct payment by the Contractor in the event the total Liquidated Damages due exceed said deductions.

The Contractor shall arrange to provide sufficient workmen, Equipment and Materials and to prosecute the Work in such sequence as will insure completion thereof within the time or times stated.

108.09 Schedule of Liquidated Damages. Liquidated Damages will be as defined in the contract Supplemental Specifications and/or the Special Provisions. In addition, Liquidated Damages of Five Hundred Dollars (\$500.00) per Identification Card will be assessed for every Authority issued Identification Card lost or not turned in to the Authority upon request or Contract closeout.

108.10 Default of Contract. The Contractor may be declared in default if, in the opinion of the Authority, any one or more of the following conditions is found to exist:

- A. The Contractor fails to begin the Work within the time specified in the Notice to Proceed.
- B. The Contractor fails to perform the Work at a satisfactory rate of progress or with sufficient labor, Equipment, and Material resources to ensure the prompt completion of the Work in accordance with the approved Schedule of Work.
- C. The Contractor's Work is unacceptable, or if the Contractor refuses to remove Materials or perform any such Work as shall be determined by the Engineer to be defective or otherwise unacceptable Work, or if the Contractor is willfully violating any of the covenants of the Contract.
- D. The Contractor discontinues the prosecution of the Work or fails to resume the Work which has been discontinued.

E. The Contractor becomes insolvent, declares bankruptcy, commits any acts of bankruptcy or insolvency, or allows any final judgment to stand unsatisfied for a period of more than forty-eight (48) hours.

F. The Contractor makes an assignment for the benefit of creditors without authorization by the Authority.

G. For any other cause whatsoever, fails to carry on the Work in a manner acceptable to the Authority.

In such event, the Executive Director will so certify to the Chairperson and the Chairperson may provide written notification to the Contractor and Surety declaring the Contractor in default on the Contract and notify the Contractor to discontinue the Project. The Chairperson may then call on the Surety to complete the Project or may complete it by other means as the Chairperson may elect. The Authority may take over any working site procured by the Contractor and may use Materials and Equipment at the site of the Project and other Equipment used elsewhere for the Project at the time of the default and may procure other Materials, Equipment and all else necessary for the completion of the Project. The Authority will recover the cost of finishing the Work of the original Contract, over and above the cost thereof at the original bid prices, by deducting the amount thereof from any monies due or which may become due the Contractor under the Contract and, when such monies are insufficient to pay said cost, the amount of said cost in excess of such monies shall be paid by the Contractor or the Surety.

108.11 Termination of Contract. The Authority may, by written order to the Contractor, terminate the Contract or any portion of the Contract when such termination would be in the best interest of the Authority. In the event such termination occurs without fault and for reasons beyond the control of the Contractor, all completed items as of the date of termination will be paid for at the applicable Unit Price. Payment for partially completed and eliminated Work will be paid for as provided in Subsection 109.06.

Acceptable Materials obtained by the Contractor for the Work but which have not been incorporated therein may, at the option of the Authority, be purchased from the Contractor at actual cost delivered to a prescribed location, or otherwise disposed of as mutually agreed.

After receipt of notice of termination from the Authority, the Contractor shall submit, within sixty (60) Days of the effective termination date, its claim for additional damages or costs not covered above or elsewhere in these Specifications. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, uncompensated bidding and project investigation costs, overhead expenses attributable to the Project terminated, legal and accounting charges involved in claim preparation, Subcontractor costs not otherwise paid for, actual idle labor costs if work is stopped in advance of the termination date, guaranteed payments for private land usage as part of the original Contract, and any other cost or damage item for which the Contractor feels reimbursement should be made. The intent of negotiating this claim would be that an adjusted figure be reached with the Contractor. In no event, however, will loss of anticipated profits be considered as part of any settlement.

The Contractor agrees to make its cost records available to the extent necessary to determine the validity and amount of each item claimed.

Termination of the Contract or any portion thereof shall not relieve the Contractor of its contractual responsibilities for the Work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the Work performed.

108.12 Termination of Contractor's Responsibility. When all of the Work included in the Contract has been finally accepted by the Authority, the Contractor shall be released from all further obligations and responsibility except as set forth and provided in Subsection 105.20, Subsection 107.03, Subsection 107.10, Subsection 107.14, Subsection 109.09 and any applicable provisions in the Special Provisions.

Section 109 - Measurement and Payment

- 109.01** Measurement of Quantities
- 109.02** Scope of Payment
- 109.03** Compensation for Altered Quantities
- 109.04** Payment for Differing Site Conditions, Major Changes, Extra Work and Force Account
- 109.05** Basis of Payment for Fixed Quantity Items
- 109.06** Eliminated Items
- 109.07** Partial Payment
- 109.08** Payment for Material
- 109.09** Retainage of Funds
- 109.10** Final Payment
- 109.11** Source of Supply and Carrier Rates on Construction Materials
- 109.12** (Intentionally Omitted)
- 109.13** (Intentionally Omitted)

109.01 Measurement of Quantities. Work completed under the Contract will be measured by the Engineer according to the United States customary units (English units).

Unless stated otherwise, all Material that is to be measured by weight shall be measured as follows:

- A. The weight of each load shall be determined by weighing each loaded truck or other approved hauling equipment and then deducting the tare weight of the truck or hauling equipment. The tare weight shall be checked once daily, or as often as directed by the Engineer. Appropriate adjustments shall be made in the use of the tare weight as directed by the Engineer. Weight tickets shall be computer generated.
- B. The scale platform shall be of such length and width that it will conveniently accommodate all trucks and other approved hauling equipment. The entire vehicle, including its load, must rest on the scale platform and be weighed as one unit.
- C. Scales will be certified by the State sealer of weights and measures.
- D. Weight tickets showing a net weight of each load of Material delivered to the Project will be signed by an Inspector.

A station when used as a definition or term of measurement will be one hundred (100) linear feet.

Areas of Work shall be measured in the field based on the Work actually completed. No payment will be made for Work beyond the Limits of Construction or limits of disturbance as prescribed in the Contract. All longitudinal measurements for area of pavement will be made along the actual surface of pavement and not horizontally, unless otherwise specified.

Unless otherwise specified, when measuring areas no deductions will be made for individual fixtures (such as manholes, utility poles, etc.) having an area of nine (9) square feet or less.

Structures shall be measured according to neat lines shown in the Contract.

In computing volumes of excavation or embankment, the average end area method will be used.

For items measured by linear foot, such as pipe, culverts, guardrails, underdrains, etc., take measurements parallel to the base or foundation upon which such structures are placed.

The term "ton" means the short ton consisting of 2000 pounds avoirdupois. The Contractor shall weigh all Material measured by weight or proportioned by weight on accurate, approved scales using competent, qualified personnel at locations designated by the Engineer. If Materials are shipped by rail, the car weight may be

accepted, provided that only the actual weight of Materials is paid for. However, car weights will not be acceptable for Material to be passed through mixing plants. Trucks used to haul Material being paid for by weight shall be weighed empty daily at such times as the Engineer directs, and each truck shall bear a plainly legible identification mark.

When requested by the Contractor and approved by the Engineer in writing, Material specified to be measured by the cubic yard may be weighed and such weights will be converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

Bituminous materials will be measured by the gallon.

Volumes will be measured at 60°F or will be corrected to the volume at 60°F using ASTM D 1250 for asphalt or ASTM D 633 for tars.

When bituminous materials are shipped by truck or transport, net certified weights or volume subject to correction for loss or foaming may be used for computing quantities.

Cement will be measured by the pound.

Unless otherwise specified, timber will be measured by the actual thousand feet board measure (MFBM) incorporated into the structure.

When a complete structure or structural unit (in effect, "Lump Sum" Work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

In computing tonnage, certified freight weigh-bills or certified weigh-slips will be used.

Measurement of other quantities not covered by the above requirements will be determined by the Engineer in accordance with recognized engineering practice.

When the Project is completed, the authorized quantities of the various items scheduled in the Contract and placed in the Project will be measured. When these quantities are greater or less than the corresponding estimated quantities stated in the Bid, Change Orders will be issued by the Authority to cover the difference between estimated and actual quantities and no payment will be made for work done in excess of the quantities stated in the Bid until such Change Orders have been issued and approved.

109.02 Scope of Payment. The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all Materials and for performing Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of every kind arising out of the nature of the Work or the performance thereof, and for any additional expenses on account of unforeseen difficulties encountered, for all expenses incurred in consequence of the suspension or discontinuance of the Work, for settlement of claims and for replacement of defective Work and Materials for one (1) year after acceptance of the Project by the Authority as provided in Subsection 105.20 and subject to the provisions of Subsection 107.13.

If the “Basis of Payment” clause relating to any Unit Price in the Contract requires that the Unit Price cover and be considered compensation for certain Work or Materials essential to a Contract Item, this same Work or Material will not be measured or paid for under any other Pay Item appearing in the Contract.

Under any section or item included in the Contract, the Contractor shall be aware that when requirements, responsibilities, and furnishing of Materials are outlined in the details and notes on the Plans and in the paragraphs preceding the “Basis of Payment” paragraph in these Specifications, no interpretation shall be made that there is an exclusion from payment because reiteration is not made in the “Basis of Payment” paragraph.

The Contractor shall execute Contractor’s Release of Liens and a Maintenance Bond and submit executed documents before final payment is made.

109.03 Compensation for Altered Quantities. When the accepted quantities of Work vary from the quantities in the Contract, the Contractor shall accept payment at the original Contract Unit Prices for the accepted quantities of Work done. No allowance will be made for any increased cost, except as provided in Subsections 104.05, 104.06, 104.07, and 108.11.

109.04 Payment for Differing Site Conditions, Major Changes, Extra Work, and Force Account. Differing site conditions, changes, and extra Work performed under Section 104 will be paid for using the following methods as appropriate:

- A. Contract Unit Prices.
- B. Unit Prices agreed upon in the Change Order authorizing the Work.
- C. A lump sum amount agreed upon in the Change Order authorizing the Work.
- D. If directed by the Authority, Work performed on a Force Account basis is to be compensated in the following manner, except as further provided in Subsection 105.21:
 - 1. Labor. For all necessary labor and foremen in direct charge of the specific operations, whether the employer is the Contractor, Subcontractor, or another entity, the Contractor shall receive the rate of wage (or scale) actually paid as shown in its certified payrolls for each and every hour that said labor and foremen are actually engaged in

such Work, but excluding wages and salaries paid to other personnel engaged in superintendence of the Work.

The Contractor shall receive the actual costs paid to, or on behalf of, workers by reason of health and welfare benefits or other benefits, when such amounts are required by collective bargaining agreements or other employment contracts generally applicable to the classes of labor employed in the Work.

2. Bond, Insurance, and Tax. For bond premiums, property damage, liability, and workers compensation insurance premiums, unemployment insurance contributions, and social security taxes on the Force Account Work, the Contractor shall receive the actual incremental cost thereof, necessarily and directly resulting from the Force Account Work. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and tax.
3. Materials. The Authority reserves the right to furnish such Materials as it deems advisable, and the Contractor shall have no claims for costs and markup on such Materials.

Only Materials furnished by the Contractor and necessarily used in the performance of the Work will be paid for. The cost of such Materials shall be the cost to the purchaser, whether Contractor, Subcontractor, or other forces from the supplier thereof, together with transportation charges actually paid by the purchaser, except as the following are applicable:

- a. If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the Authority notwithstanding the fact that such discount may not have been taken.
- b. If Materials are procured by the purchaser by any method which is not a direct purchase from a direct billing by the actual supplier to such purchaser, the cost of such Materials is the price paid to the actual supplier as determined by the Engineer plus the actual costs, if any, incurred in the handling of such Materials.
- c. If the Materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of such Materials shall not exceed the price paid by the purchaser for similar Materials furnished from said source on items or the current wholesale price for such Materials delivered to the job site, whichever price is lower.
- d. If the cost of such Materials is, in the opinion of the Engineer, excessive, then the cost of such material is deemed to be the lowest current wholesale price at which such Materials are available in the quantities concerned delivered to the Project site, less any discounts as provided in subpart D.3.a. above.

e. If the Contractor does not furnish satisfactory evidence of the cost of such Materials from the actual Supplier thereof, the cost will be determined in accordance with subpart D.3.d. above.

f. For all Materials not incorporated into the permanent construction but necessarily involved in the performance of the Work, the Contractor shall receive an amount equal to the actual cost of such Materials, less a reasonable allowance for the salvage value of such Materials when they are no longer required for the performance of the Work. (Fuels and lubricants consumed by Equipment shall be included in the Rental Value and Rental Costs described below.)

4. Equipment and Plant.

a. Contractor-Owned Equipment and Plant. The hourly rates for Contractor-owned Equipment and plant will be determined from the applicable volume of the Blue Book.

The Blue Book will be used in the following manner:

1. The hourly rate will be determined by dividing the monthly rate by 176. The weekly, hourly, and daily rates will not be used.
2. The number of hours to be paid will be the number of hours that the Equipment or plant is actually used on a specific Force Account activity.
3. The current revisions will be used in establishing rates. The current revision applicable to specific Force Account Work is as of the first day of Work performed on that Force Account Work, and such rate applies throughout the period the Force Account Work is being performed.
4. An area adjustment will be made. Equipment life adjustment will be made in accordance with the rate adjustment tables. Overtime shall be charged at the same rate indicated in (1) above.
5. The estimated operating costs per hour will be used for each hour that the Equipment or plant is in operation on the Force Account Work. Such costs do not apply to idle time regardless of the cause of the idleness.
6. Idle time for Equipment will not be paid for, except where the Equipment has been held on the Project site on a standby basis at the request of the Engineer and, but for this request, would have left the Project site. Such payment will be made at one-half the rate established in subparts D.1. and D.4. above.

7. The rates established above include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs, overhaul and maintenance of any kind, depreciation, storage, overhead, profits, insurance, and all incidentals.
8. Operator costs are not included in this hourly rate for the Equipment.

All Equipment shall, in the opinion of the Engineer, be in good operating condition. Equipment used by the Contractor shall be specifically described and be of suitable size and suitable capacity required for the Work to be performed. In the event the Contractor elects to use Equipment of a higher rental value than that suitable for the Work, payment will be made at the rate applicable to the suitable Equipment. The Engineer will determine the suitability of the Equipment. If there is a differential in the rate of pay of the operator of oversize or higher rate Equipment, the rate paid for the operator is to be that for the suitable Equipment.

In the event that a rate is not established in the Blue Book for a particular piece of Equipment or plant, the Engineer will establish a rate for that piece of Equipment or plant that is consistent with its cost and use in the industry.

The above provisions apply to the Equipment and plant owned directly by the Contractor or by entities which are divisions, affiliates, subsidiaries, or in any other way related to the Contractor or its parent company.

- b. Rented Equipment and Plant. In the event that the Contractor does not own a specific type of Equipment and must obtain it by rental, the Contractor shall inform the Engineer of the need to rent the Equipment and of the rental rate for that Equipment prior to using it on the Work. The Contractor will be paid the actual rental rate for the Equipment for the time that the Equipment is actually used to accomplish the Work, provided that rate is reasonable, plus the cost of moving the Equipment on to and away from the job. The Contractor shall provide a copy of the paid receipt or canceled check for the rental expense incurred.
5. Miscellaneous. No allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

6. Profit. Profit shall be computed at five percent (5%) of the following:
 - a. Total Material cost (bare cost not including shipping or freight charges).
 - b. Total direct labor cost (actual hours worked multiplied by regular hourly rate and benefits), as provided by Subsection 109.04 subpart D.1.
7. Overhead. Overhead is defined to include the following:
 - a. All salaries and expenses of executive officers, supervising officers, or supervising employees and all home office expenses;
 - b. All salaries of clerical or stenographic employees;
 - c. All charges for minor Equipment, such as small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, and other miscellaneous supplies and services; and
 - d. All drafting room accessories such as paper, tracing cloth, and blueprinting.

Overhead costs for Force Account Work shall be computed at ten percent (10%) of the following:

- e. Total Material cost (bare cost not including shipping or freight charges).
 - f. Total direct labor cost (actual hours worked multiplied by the regular hourly rate) and benefits as provided by Subsection 109.04 subpart D.1.
 - g. Total Equipment cost.
 - h. Specific extraordinary overhead expenses, such as the hiring of additional supervisory personnel or the use of special types of minor Equipment (as defined above), which the Contractor has to purchase specifically for the Force Account, may be allowed. In such instances, the Contractor will be paid only the reasonable costs of such extraordinary overhead expenses, provided the Engineer has agreed to such costs prior to their being incurred.
8. Subcontracting. For administration costs in connection with approved subcontract Work, the Contractor shall receive an amount equal to five percent (5%) of the total of such Work completed as set forth in subparts D.1. through D.4. above.
 9. Records. The Contractor shall maintain Force Account records in such a manner as to provide a clear distinction between the direct

costs of Work paid for on a Force Account basis and the costs of other operations.

From the above records, the Contractor shall furnish the Engineer completed daily Force Account Work reports for each day's Work to be paid for on a Force Account basis. Said daily Force Account Work reports shall be signed by the Contractor and submitted daily. The daily Force Account Work reports shall be detailed as follows:

- a. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.
 - b. Designation, dates, daily hours, total hours, rental rate (including a copy of the Blue Book pages used), and extension for each unit of machinery and Equipment.
 - c. Quantities of Materials, prices, and extensions.
 - d. Transportation of Materials.
 - e. Cost of property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; bonds; and social security tax.
10. Welfare and Pension Fund (if any). The actual additional amount of contributions paid by the Contractor for the welfare and pension fund of his, her or its employees.
11. Tolls. The actual cost of tolls paid for the Contractor's vehicles necessarily employed in the performance of the Work. Tolls for employees' personal vehicles will not be reimbursed.

Material charges shall be substantiated by valid copies of Supplier invoices. Such invoices shall be submitted with the daily Force Account Work reports or, if not available, they shall be submitted with subsequent daily Force Account Work reports. Should said Supplier invoices not be submitted within sixty (60) Days after the date of delivery of the Material, or within fifteen (15) Days after the completion of the Work, whichever occurs first, the Authority reserves the right to establish the cost of such Materials at the lowest current wholesale prices at which said Materials are available in the quantities concerned and delivered to the location of the Work, less any discounts provided in Subsection 109.04 subpart D.3.a.

The Engineer will compare its records with the completed daily Force Account Work reports furnished by the Contractor and make any necessary adjustments. When these daily Force Account Work reports are agreed upon and signed by both parties, said reports become the basis of payment for the Work performed, but do not preclude subsequent adjustment based on a later audit by the Authority.

The Contractor's cost records pertaining to Work paid for on a Force Account basis

shall be open to inspection or audit by representatives of the Authority as provided in Subsection 105.19 subpart J.

109.05 Basis of Payment for Fixed Quantity Items. When indicated on the Plans or in the Supplemental Specifications or Special Provisions, certain items will be paid for on an estimated fixed quantity item basis. Where this occurs, the method of measurement and basis of payment indicated in these Specifications for such items are deleted.

When estimated fixed quantities are indicated, the only quantities for which payment will be made are the estimated quantities as shown in the Bid at the Unit Prices bid.

The Bidder should check the estimates and make its own appraisal of the amount of labor, Equipment, or Material required to complete the Work in accordance with the Plans and Specifications. No allowance will be made or claims considered for any quantities used in completing the Work in excess of those given in the Bid unless changes due to conditions encountered during construction become necessary and are authorized in writing by the Engineer. In such cases additions or deductions will be made to or from the Bid quantities for the actual volume or amounts charged, with payment adjusted in accordance with the Unit Price of the Contract Item.

If estimated fixed quantity items are deleted completely, no payment will be made.

In cases where a fixed quantity is contested by the Contractor, it shall be the responsibility of the Contractor to provide necessary measurements and computations to support a change in the quantity. If the change is verified and approved by the Engineer, payment will be adjusted in accordance with this Subsection.

In cases where it can be shown that the quantities indicated in the Bid are in error by more than five percent (5%), additions or deductions will be made in excess of or deficient of the five percent (5%), with payment adjusted in accordance with the Unit Price of the item.

109.06 Eliminated Items. Should any items contained in the Contract be found unnecessary for the completion of the Work, the Engineer may, upon written order to the Contractor, eliminate the items from the Contract. The elimination of these items shall not invalidate the Contract. When the Contractor is notified of the elimination of items, the Contractor will be reimbursed for the actual Work done and all actual costs incurred. Reimbursement of Materials actually purchased prior to notification of the elimination of items will be paid for at the actual cost of the Materials plus fifteen percent (15%). Such Materials shall become the property of the Authority. In no event will reimbursement for an eliminated item exceed the extended amount of the Contract Item. Also, in no case will the Contractor be reimbursed for the loss of anticipated profit.

109.07 Partial Payment. Once in each month, the Authority will prepare a certificate showing the approximate quantities of Work done and all Materials furnished but not

incorporated in the Work, up to the date of such certificates and the value of such Work and such Materials. The Authority will retain ten percent (10%) of the value of such Work and twenty percent (20%) of the value of such Materials as security for the fulfillment of the Contract by the Contractor until the completion of the Contract and the Authority will pay monthly to the Contractor while carrying on the Work, the balance not retained as aforesaid after deducting therefrom all previous payments. Provided that the Work is proceeding satisfactorily on the basis of approved construction schedules, the total amount retained in connection with the Work done shall not exceed five percent (5%) of the total value of the Contract; the amount retained in connection with Materials furnished but not incorporated in the Work shall in all cases be twenty percent (20%) of the value of such Materials.

The value of Materials furnished but not incorporated in the Work shall be as determined by the Authority and such value will be included in the monthly certificates only if the Materials have been delivered at or near the site of the Work or in a location approved by the Authority, are properly stored and protected, and have been inspected and approved, and the Contractor has furnished the Authority with satisfactory releases of liens for said Materials.

If it becomes evident, on the basis of approved progress schedules or otherwise, that the completion date for the Contract will not be met, the Authority reserves the right to retain ten percent (10%) of the value of the Work done throughout the entire Contract period and to make additional retention in the amount of the Liquidated Damages which have apparently accumulated.

When the Work of the Contract is being satisfactorily carried to completion within the prescribed time and is substantially completed, the Authority may, in its discretion, reduce the retainage below the amounts set forth above.

The Authority shall have the right to retain out of monies due or to become due the Contractor any amounts claimed by the Authority to be due the Authority from the Contractor, which retainage shall be in addition to any retainage set forth elsewhere.

In the event of any conflicting claim or claims about the right to receive payments which may be or become due from the Authority under the terms of the Contract, the Authority may withhold any or all payments until such dispute or disputes be finally resolved in accordance with Subsection 105.17.

The Authority shall have the right to withhold from monies due or to become due the Contractor an amount sufficient to completely indemnify the Authority against liability resulting from any claims against the Contractor or any Contract claim filed with the Authority.

When the Work is suspended as provided in Subsection 104.07, a semi-final certificate may be made at the discretion of the Engineer. This certificate will show the cost of the Work completed and the estimated cost to complete the Work, based on the Unit Prices bid and the quantities scheduled in the Bid as amended by Change Orders, if any, except that for such parts of the Work that are not fully completed at the time of

suspension of the Work and for that reason are not susceptible to any estimate of cost as above provided, the estimated cost to complete will be determined by the Engineer. When the semi-final certificate is approved, payment will be made to the Contractor in the sum of the cost of the Work completed, after deduction of previous monthly payments on account and deduction of twenty-five percent (25%) of the estimated cost to complete the Work determined, provided, however, that before said payment is made, the following requirements shall be satisfied:

- (a) There shall be no outstanding claims against the Contractor filed with the Authority;
- (b) The Contractor shall have paid all due obligations and shall have furnished, when directed by the Authority, receipted bills or other satisfactory evidence that all obligations incurred by him, her or it and by his, her or its Subcontractors in carrying out the Project have been satisfied;
- (c) The Contractor shall have delivered a bond as specified in Subsection 105.20; and
- (d) The Contractor shall execute and deliver a release substantially in the following form:

“In consideration of the above payment, (I) (we) hereby release The Delaware River and Bay Authority and its officers, agents and employees from all claims, demands and liability of whatsoever nature for anything done or furnished or in any manner growing out of the performance of the Project, except that it is understood that credit will be given in the final certificate for the amount covering twenty-five percent (25%) of the estimated cost to complete the Work, which has been deducted in the semi-final certificate.”

The acceptance by the Contractor of payment of any semi-final certificate shall operate as and shall be a release to the Authority and its agents from all claims of, or liability to, the Contractor for anything done or furnished for or relating to the Project or any act or neglect of the Authority or any person relating thereto, except for the credits specified in the release form hereinabove set forth and except that the Contractor has the right and is obligated to continue and complete the Project when notice to resume has been received by him, her or it.

109.08 Payment for Material. When approved by the Authority, partial estimates may include an allowance for the value of tested and acceptable Materials of a non-perishable or non-contaminative nature which have been produced or furnished in a condition ready for incorporation as a permanent part of Work yet to be completed, provided the following terms and conditions are met:

A. Request. The request for payment allowance for properly stored Materials must be in writing, accompanied by an itemized inventory statement, written consent of the Surety, and an invoice or purchase order on the Supplier’s letterhead documenting the cost of the Materials.

B. Materials. An allowance of eighty percent (80%) of the cost to the Contractor for Materials may be made when such material is delivered and stockpiled or stored in accordance with the requirements specified herein.

Prior to such allowance, all such Material shall have been tested and found acceptable to the Engineer.

Payment shall not be allowed in excess of the quantity required for the Contract. The required quantity shall be based on the Contract bid quantities and approved revisions.

C. Excluded Materials. No allowance shall be made for fuels, form lumber, false-work, temporary structures, or for other Materials of any kind which will not become an integral part of the finished construction.

No allowance shall be made for cement, aggregate, sand, seed, plants, fertilizer, or other perishable or contaminative items, nor for Materials which, in the opinion of the Engineer, have an unacceptable shelf life, environmental, or safety restriction.

D. Storage. All Materials shall be stored in an approved manner and in areas where damage is not likely to occur. The Material stored shall be dedicated to the Project.

When it is determined impractical to store Materials within the limits of the Project, the Engineer may approve the storage of Materials on private property or, for structural members, in the manufacturer's or fabricator's yard. Requests for payment for such Material stored outside the limits of the Project shall be accompanied by a release from the owner and/or tenant of such property or yard agreeing to permit the removal of the Materials from the property without cost to the Authority.

E. Materials Inventory. Materials shall be available for inspection and inventory at the storage site by the Engineer at all times.

F. Materials Measurement and Payment. The method of measurement for Materials shall be in units which are easily inventoried and acceptable to the Engineer. Payment allowance for Materials shall be included in the progress estimate as a new and separate item and shall be subject to retainage provisions. Submit proof of payment to the Engineer prior to processing the next progress estimate in the form of a paid invoice from the Material Supplier. Failure to submit proof of payment prior to the processing of the progress payment will result in the deduction of the applicable Material payment, in its entirety, from progress payments until such time as the proof of payment is received by the Engineer. As the Materials are incorporated in the Project and paid for in place, an equal percentage shall be deducted from progress estimates until one hundred percent (100%) of the allowance has been deducted. At the conclusion of the Work for which the Materials are required, the cost of Materials remaining in storage for which payment allowance has been made will be deducted from the progress estimate.

109.09 Retainage of Funds. Whenever Liquidated Damages are assessable, such damages shall be deducted from the monthly and final estimates. The payment of

any current or final estimate or of any retained percentage shall in no way affect the obligation of the Contractor to repair or renew any defective parts of the construction and to be responsible for all damage due to such defects.

If at any time there is evidence of any lien or claim for which, if established, the Authority might become liable and which is chargeable to the Contractor, the Authority shall have the right to retain out of any payment then due or to become due an amount sufficient to completely indemnify the Authority against such lien or claim. If there should prove to be any such claim after all payments are made, the Contractor shall refund to the Authority all monies that the Authority may be compelled to pay in discharging any lien made obligatory in consequence of the Contractor's neglect or default.

No provision contained in these Specifications shall be construed as creating any debt, liability or obligation on the part of the Authority to any Subcontractor, Supplier, or materialman.

109.10 Final Payment. When all Work required under the Contract has been completed and, in the opinion of the Engineer, is ready for final acceptance by the Authority, a final certificate of cost of the Project will be made by the Authority, based on the actual as-built quantities of authorized Work done under each item scheduled in the Contract (as may have been amended by Change Orders and Supplemental Agreements, if any) at the Unit Price or prices stipulated therein.

When this final certificate is approved, the money due the Contractor for the performance of the Project as determined by said final certificate, after deduction of previous payments on account, will be paid the Contractor, provided however, that before such final payment is made, the following requirements shall be satisfied:

- (a) There shall be no outstanding claims against the Contractor filed with the Authority;
- (b) The Contractor shall have paid all due obligations and shall have furnished, when directed by the Authority, receipted bills or other satisfactory evidence that all obligations incurred by the Contractor and by their Subcontractors in carrying out the Project have been satisfied;
- (c) The Contractor shall have delivered a bond as specified in Subsection 105.20; and
- (d) The Contractor shall execute and deliver a final release substantially in the following form:

"This is to certify that all just liens, claims and demands for labor, Materials and rental of Equipment arising out of the prosecution of the Work under the above-named Contract are fully paid and satisfied and that all of the Work is fully released, freed and discharged from all liens, claims and demands whatsoever, whether just or otherwise of any contractors, subcontractors, materialmen, suppliers, laborers, artisans or architects.

In consideration of the final payment of said Contract, we hereby remise, release and forever discharge The Delaware River and Bay Authority, its commissioners, officers, representatives, employees, agents and servants from all and all manner of actions and cause of actions, suits, debts, accounts, bonds, covenants, contracts, agreements, judgments, liens, demands and liability of whatever nature in law and in equity from anything done or furnished or in any manner growing out of the doing of the Work under this contract, including any and all extra or reduction orders issued thereunder and any agreements supplementary thereto, and anything whether known or unknown, suspected or unsuspected or which we ever had, now have or which our heirs, executors, administrators, successors or assigns shall or may have; and we hereby agree to indemnify and hold harmless The Delaware River and Bay Authority against any and all claims which hereafter may be made or instituted against it by any contractors, subcontractors, materialmen, suppliers, laborers, artisans or architects for the purpose of enforcing a lien, claim or demand arising out of the prosecution of the Work under the above-named contract.”

- (e) The Contractor shall provide the Authority with a list of Subcontractors, materialmen, Suppliers, laborers, artisans or architects who have provided labor, material or services on the credit of the job and as a condition of final payment shall provide the Authority with a sworn, notarized statement by an authorized officer of each Subcontractor, laborer, artisan or architect attesting and certifying that it has been paid all monies due and owing from the contractor and does remise, release and forever discharge the Authority from any and all manner of action, suits, proceedings, deeds, dues, contracts, judgments, damages, claims and demands whatsoever in law and equity arising from said Contract and specifically any right to file a statutory mechanics’ lien. In the case of any person who has filed a mechanics’ lien, the Contractor shall be required to provide a “Discharge of Construction Lien Claim” executed and sworn to and acknowledged under oath by the lien claimant prior to receiving final payment. A form of “Release of Mechanics’ Lien” and a form of “Discharge of Construction Lien Claim” will be provided by the Authority to the Contractor at the time final payment is requested by the Contractor.

Compliance with the provisions of this subparagraph (e) is a matter of administrative convenience. It is the Authority’s position that the property of the Authority, as an agency of the States of Delaware and New Jersey, is not subject to the filing of statutory mechanics’ liens.

The acceptance by the Contractor of payment of the final certificate shall operate as and shall be a release to the Authority and its agents from all claims of or liability to the Contractor for anything done or furnished or omitted to be done, or furnished for or relating to, the Project or any act or neglect of the Authority or any person relating thereto.

109.11 Source of Supply and Carrier Rates on Construction Materials. Bidders must fully inform themselves as to the source of supply of acceptable Materials needed for the Work and in regard to the carrier rates and transportation facilities for these Materials before submitting Bids.

Inability to secure satisfactory Materials from the source upon which the Bid was based, or changes in carrier, or the alteration of transportation facilities for these Materials during the life of the Contract, shall not constitute cause for a claim for extra compensation.

109.12 (Intentionally Omitted)

109.13 (Intentionally Omitted)