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interval of no more than ten (10) working days between receipt of a written claim by the Contractor and receipt by the carrier. The Contractor and/or the Insurance Carrier are expected to investigate, determine and adjust such claims promptly and fairly with notice to the Engineer. The Engineer will monitor claims by the public. If the Contractor fails to provide satisfactory resolution through a timely claims adjustment process or denies the claim without proper cause and justification, the Department may invoke Article 8 of the contract or utilize other remedies referenced in the contract specification.

107-10 RESTORATION OF DISTURBED AREAS OUTSIDE THE RIGHT-OF-WAY. It is the intent of this specification that all areas outside of the right-of-way, except as noted in the following text, disturbed, used by, or serving as a source of material for the Contractor be restored to a pleasing and acceptable condition as specified and as satisfactory to the Engineer.

The Contractor shall obtain the written approval of the Engineer for the use of any specific area before any work in such area is begun, except as noted in the following text. Where deemed necessary by the Engineer the Contractor shall submit, as part of the request for approval, a grading plan showing the proposed final grading of the area. Approval shall not be given if, in the opinion of the Engineer, the area is not suited to acceptable restoration or if serious or permanent ecological damage is foreseeable. This specification applies to areas such as, but not limited to, borrow pits or areas, spoil or waste areas, haul roads, storage areas batching areas, equipment storage areas, shop areas and all similar areas. This does not apply to areas which have been or are being used by the Contractor as its established and permanent headquarters and equipment pool sites or to commercial borrow sources, commercial gravel pits, commercial quarries, public disposal areas and all similar areas.

In accordance with Article 23, Title 27 of the Environmental Conservation Law all borrow pits and aggregate sources outside of the State right-of-way, where more than one thousand metric tons of minerals are removed from the earth within any twelve successive calendar months, require mining permits obtained from the New York State Department of Environmental Conservation. When such permit is required, the Contractor, in addition to complying with all restoration requirements for all areas as stated below, may be required by the Engineer to meet any standard contained in the Mined Land Reclamation Law, Rules and Regulations (6 NYCRR Parts 420 et. seq.)

In general, the restoration shall include:

A. The removal of all equipment and parts, junk, rubbish, excess materials and debris of all kind;
B. Clean up as required, grading as shown if a grading plan has been prepared; or graded so as to blend into the surrounding ground forms to the satisfaction of the Engineer;
C. Scarification of storage yards, batching sites, haul roads, etc., to the depth determined by the Engineer as necessary to support vegetation;
D. The removal and regrading of temporary roads or areas as required by the Engineer;
E. The repair or removal of damaged trees and the fertilizing, seeding and mulching of the areas as provided for in the contract or as directed by the Engineer;
F. Grading the slopes of excavated areas to a stable condition, but in no case shall earth cut faces be left steeper than one (1) vertical on one and one-half (1.5) horizontal. All rock cut slopes shall be scaled to remove any loose or unstable rock.

Areas within sight of the finished highway or any other highway will require particular attention insofar as the above features are concerned. It is the intent to have all such areas present a pleasing appearance to travelers on any highway.

Where borrow pits result in the formation of ponds or low areas intermittently filled with water the Contractor shall furnish the Engineer with a copy of its agreement with the landowner permitting the use of such areas. If such an area is within sight of any highway, the Regional Director’s written approval must be obtained prior to the removal of any borrow from such a location. If such approval is not granted, material for use on the contract or for any other State contract may not be removed from
the area. In the event the Contractor removes material from such an area without the written approval of the Regional Director, payment will not be made for any item of work in which the material has been used. Grading plans may be required for such areas and due consideration given to the appearance of the areas if they are visible from any highway.

All of this restoration shall be accomplished prior to acceptance of the contract except that work of restoring Contractor’s work areas (storage, batching, equipment, shop areas, etc.) may be done after the official acceptance of the contract but must be completed prior to the final release of retained funds.

Since the extent of such areas and the use and treatment during construction is within the discretion of the Contractor, within the limitations and requirements outlined, no payment will be made for any labor, material or equipment necessary for the restoration of these areas. The cost of the work shall be included in the amount bid for other items of work. Any work done shall, in general, be in accordance with the Department’s specifications for similar items of work and/or as specified by the Engineer.

In the event the Contractor carries on any operation on the referenced areas without written approval of the Regional Director and/or Engineer no payment will be made for any item in the contract involved in any way with any operation on the unapproved area.

107-11 RESTORATION OF DISTURBED AREAS WITHIN THE RIGHT-OF-WAY. It is the intent of this specification that all disturbed areas within the right-of-way but outside of the work limits be restored to a pleasing and acceptable condition as specified and as satisfactory to the Engineer. For the purposes of this section the work limits shall include the road section plus a reasonable work area at top of cut and toe of fill as determined by the Engineer.

Where a pay item for turf establishment is not included in the contract, disturbed earth areas within the work limits shall be graded in a manner approved by the Engineer and seeded as specified for the standard turf establishment item. The cost of this work shall be included in the prices bid for the various items in the contract and no separate payment shall be made therefor.

The Contractor shall obtain the written permission of the Engineer before beginning the use of any area within the right-of-way, but outside the work limits as noted in the preceding paragraph. Where deemed necessary by the Engineer, the Contractor shall submit, as part of the request for approval, a grading plan showing the proposed final grading of the area. If in the opinion of the Engineer, the area is not adaptable to acceptable restoration or if serious or permanent ecological damage is foreseeable, approval shall not be given. This specification applies to areas such as, but not limited to, borrow pits or areas, spoil or waste areas, haul roads, storage areas, batching areas, water points, equipment storage areas, shop areas and similar areas.

In general, the restoration shall include:

A. The removal of all equipment and parts, junk, rubbish, excess materials and debris of all kind;
B. Clean up as required, grading as shown if a grading plan has been prepared or graded so as to blend into the surrounding ground forms to the satisfaction of the Engineer;
C. Scarification of storage yards, batching sites, haul roads, etc., to the depth of the compaction as determined by the Engineer;
D. The removal of pavement or granular surfacing from temporary roads or areas as required by the Engineer;
E. The repair or removal of damaged trees and the fertilizing, turf establishment and mulching of the areas as provided for in the contract or as directed by the Engineer.

Areas within sight of the finished highway or any other highway will require particular attention insofar as the above features are concerned. It is the intent to have all such areas present a pleasing appearance to travelers on any highway.

All of this restoration shall be accomplished prior to acceptance of the contract except that work of restoring Contractor’s work areas (storage, batching, equipment, shop areas, etc.) may be done after the official acceptance of the contract but must be completed prior to the final release of the retained funds.

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No payment will be made for any labor, material or equipment necessary for the restoration of disturbed areas which extend beyond the work limits. The cost of such work shall be included in the price bid for the various items of the contract. All work shall be in accordance with the Department's specifications for similar items of work and/or as specified by the Engineer.

107-12 WATER QUALITY PROTECTION. The Contractor shall protect all water resources within the project limits and take measures to maintain water quality of receiving water bodies. The Contractor shall schedule and conduct its work to minimize soil erosion and to prevent turbidity in water bodies and sedimentation on lands adjacent to or affected by the work. Construction of temporary soil erosion and sedimentation control measures, temporary and permanent soil stabilization, construction of drainage facilities and performance of other contract work which will contribute to the control of erosion and sedimentation shall be carried out in conjunction with related construction operations. The area of unprotected soil exposed at any one time by construction operations shall be kept to a minimum and shall not exceed the limits established in the contract documents or applicable permits.

Prior to the start of related construction, the Contractor shall review the erosion and sedimentation control plan included in the contract documents and, if necessary, modify the plan for compatibility with the Contractor's intended sequence of construction operations. The modified erosion and sedimentation control plan shall be submitted to the Engineer for approval, along with a project schedule for accomplishment of temporary and permanent erosion and sedimentation control work in accordance with §108-01. The Contractor shall also submit for approval at the same time a proposed plan of erosion and sedimentation control on material storage areas, haul roads and borrow pits and a plan for disposal of surplus excavated materials. The Contractor's erosion and sedimentation control plan shall be prepared in accordance with the technical requirements contained in the "New York Guidelines for Urban Erosion and Sediment Control", latest edition, printed by the Empire State Chapter, Soil and Water Conservation Society, c/o Cayuga County SWCD, 7413 County House Road, Auburn, New York 13021. No related work shall be started until the erosion and sedimentation control plans and project schedules have been approved by the Engineer. If conditions change during construction or work is not progressed in accordance with the schedule, the Contractor shall submit an updated erosion and sedimentation control plan, if necessary, for approval by the Engineer.

The Contractor's operations shall be carried out in accordance with the approved erosion and sedimentation control plans and project schedule, the contract documents and permits. The Contractor shall be guided by, but not limited to, the following:

A. Permits. All applicable statutes, regulations, permits and approvals of the N.Y.S.D.E.C., other water quality management agencies and fish and wildlife agencies shall be complied with in the performance of the contract. Care shall be taken so as not to cause turbidity that will result in a visible contrast to the natural conditions of a waterway or impoundment, cause sedimentation or impair the waters for their best usages.

B. Borrow Spoil or Waste Areas. When borrow material is obtained from other than commercially operated sources, erosion of the borrow site shall be controlled both during and after completion of the work, so that erosion will be minimized and sediment will not enter waterways, impoundments or adjacent properties. Waste or spoil areas and construction roads shall be located, constructed and maintained in a manner that will prevent sediment from entering waterways and impoundments.

The Contractor shall submit grading plans for all borrow pits or areas, spoil or waste areas to the Engineer for approval prior to the start of work on or use of such areas. The grading plans shall indicate the sequence of operations, temporary slopes, and the erosion and sedimentation control plans for each construction operation.
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C. Fording. Forging of waterways will not normally be permitted, therefore, temporary bridges or other structures shall be used where a waterway crossing is necessary. Unless otherwise approved in writing by the Engineer, the Contractor shall not ford or operate mechanized equipment in waterways.

D. Work Areas Adjacent to Waterways. When work areas or gravel pits are located in or adjacent to waterways or impoundments, such areas shall be separated from the rest of the waterway or impoundment by a dike or other barrier to prevent sediment from entering a flowing waterway or impoundment. Care shall be taken during the construction and removal of such barriers so as not to cause turbidity or sedimentation.

E. Removal of Temporary Obstructions. All waterways shall be cleared as soon as practicable of false work, piling, debris or other obstructions placed during construction operations and which are not a part of the finished work.

F. Maintenance. Ditches which are filled, and erosion and sedimentation control measures which have been displaced, or are partly or wholly inoperative, shall be cleaned and made operative before the Contractor stops work for each day, and shall be maintained in a condition satisfactory to the Engineer for the duration of the contract.

G. Water Discharges. Water containing sediment from aggregate washing, pump discharges or other operations shall be treated by filtration, settling basin or other means sufficient to prevent turbidity or sedimentation of receiving waterways. Turbid wash water or pump discharges shall not be allowed to enter waterways or impoundments.

H. Pollutants. Pollutants such as fuels, lubricants, bitumens, raw sewage and other harmful materials shall not be discharged into or near waterways and impoundments or into natural or manmade channels leading thereto.

The Contractor shall ensure that all controls are functioning in an effective manner and address all failures or other problems in a pro-active manner, immediately. If a situation comes to the Engineer’s attention, the Engineer will inform the Contractor of unsatisfactory construction procedures and operations insofar as water quality management are concerned. The Engineer will also review the Contractor’s compliance with state and federal permit conditions as they relate to water quality. If the unsatisfactory construction procedures and operations are not corrected in a timely manner, the Engineer will suspend the performance of any or all operations in accordance with §105-01 until the unsatisfactory condition has been corrected.

107-13 OPENING HIGHWAY TO TRAFFIC PRIOR TO ACCEPTANCE. When directed, in writing by the Regional Director, the Contractor shall open to traffic any portion of new pavement and/or structures before final acceptance of the contract. Traffic on these portions of highway so opened to travel by the Regional Director, shall be maintained and protected in accordance with all the provisions of the Maintenance and Protection of Traffic items in the contract.

Should the Contractor be dilatory in completing certain features of the work on the portion of the highway directed to be opened, the Regional Director may order all or a portion of the said highway open to traffic; and in this event the Contractor shall not be relieved of its liability and responsibility during the period the work is so opened prior to final acceptance.

These provisions apply not only to the reconstruction of existing highways, but also to work on new locations where traffic is not maintained during construction.
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107-14 FURNISHING RIGHT-OF-WAY. The Department will secure all rights-of-way in advance of construction. Any exception will be indicated prior to the award of the contract.

The Contractor shall not enter upon any parcel until the proper rights of entry have been obtained.

The Contractor's attention is directed to the fact that Permanent Easements (P.E.), Temporary Easements (T.E.) and Temporary Occupancies (T.O.) are obtained by the Department for specific construction purposes. Contractors should not anticipate unlimited usage of such areas and must confine construction activities to such purposes as are specifically described in the ROW appropriation maps and/or as shown on the plans unless separate agreements are made between the Contractor and the landowner permitting other usage of such areas. Such limitations and related costs shall be reflected in the bid prices.

107-15 AIR QUALITY PROTECTION. The Contractor shall schedule and conduct activities to minimize impacts to air quality and to prevent hazardous or objectionable air quality conditions within the project limits and in areas adjacent to or affected by the work. The Engineer will suspend the performance of any construction activity that creates hazardous or objectionable air quality conditions until the unsatisfactory condition has been corrected.

A. Dust. The Contractor shall apply pro-active measures to prevent discharge of dust into the atmosphere that unreasonably interferes with the comfortable enjoyment of life and property or is harmful to plants or animals.

B. Burning. Any material generated by any activity for the development, modification and construction of any transportation facility shall not be burned on the contract site. This shall include but not be limited to products of land clearing and demolition.

C. Prevention. The Contractor shall employ appropriate protection techniques and/or systems to prevent hazardous or objectionable air quality conditions, particularly when conducting drilling, cutting, grinding, abrasive blasting or similar operations that impact air quality.

107-16 SOLID WASTE MANAGEMENT. The Contractor shall manage all waste generated in the performance of the contract in accordance with applicable federal, state, and local laws and regulations. Nothing herein is intended to prevent the Contractor from removing waste materials to appropriate off-site locations for beneficial reuse, recovery, or recycling purposes. The Contractor is encouraged to reuse, salvage or recycle excess materials to the maximum extent possible.

Solid Waste Management shall mean the collection, transportation, transfer, processing, recovery, storage, reclamation, treatment, handling and disposal of the waste whether performed directly by the Contractor or others. Unless otherwise noted in the contract documents, all materials or substances that are spent, useless, worthless, or in excess to the Department, including materials generated on-site by the Department's project supervision and inspection activities are considered to be waste.

Unless specifically noted in the contract documents, it is not expected that on-site landfill of regulated wastes will be allowed within the project limits. Payment for proper solid waste management is included in the various pay items. The absence or unavailability of disposal sites on the project or the refusal of a legally permitted solid waste management facility to accept waste shall not be the basis of a claim for additional compensation by the Contractor for the necessary and appropriate off-site disposal of wastes.

A. Construction and Demolition Debris. Construction and demolition debris (C&D) is uncontaminated solid waste resulting from land clearing and from the construction, remodeling, repair and demolition of utilities, structures, and roads. C&D debris includes, but is not limited to: uncontaminated concrete, asphalt pavement, brick, soil, rock, glass, wood (including painted, treated and coated wood and wood products), land clearing debris, plumbing fixtures, electrical wiring, electrical components containing no hazardous liquids, nonfriable asbestos, wall coverings, plaster, drywall, roofing shingles and other roof coverings and pipes or metal attached to or
embedded in these waste materials. Reinforcing steel embedded in concrete is considered an incidental metal and is included within the definition of concrete. Wastes may be presumed uncontaminated absent records, existing data, or knowledge/observation to the contrary. The term soil normally includes uncontaminated soil materials generated by the cleaning of ditches, drainage culverts, storm sewers, catch basins, and related appurtenances, and sweeping streets. Wood chips used for mulch, landscaping, or erosion control purposes are not solid waste. Construction and demolition debris may be disposed of in a C&D landfill or processing facility.

Construction and demolition debris limited to uncontaminated concrete, asphalt pavement, brick, glass, soil, and rock and may be buried on property owned by the Department in accordance with the requirements of §203-3.08 Disposal of Surplus Excavated Materials or §203–3.10 Embankments and §107–11 Restoration of Disturbed Areas Within the Right-of-Way. These wastes may also be disposed of at an off-site facility exempt from permit requirements that operates only between the hours of sunrise and sunset and takes no compensation, fee or other form of consideration. Exempt C&D debris shall not be pulverized, shredded, or otherwise processed such that the individual waste components are rendered unrecognizable.

Trees, stumps, wood chips and yard waste generated from activities within the right of way shall be segregated from other exempt wastes when buried. These wastes may be buried on property owned by the Department in accordance with the requirements of §203-3.08 Disposal of Surplus Excavated Materials and §107–11 Restoration of Disturbed Areas Within the Right-of-Way.

All disposal within the Right-of-Way shall be subject to the approval of the location, final condition and appearance by the Engineer. The Department makes no assurance that appropriate areas for the disposal of these wastes will be available for any individual project. If no disposal area is available within the Right-of-Way, the Contractor shall dispose of these wastes at an appropriately permitted C&D debris facility.

In Nassau and Suffolk Counties all construction and demolition debris shall be disposed of only in a C&D landfill or processing facility permitted by the New York State Department of Environmental Conservation (NYSDEC). In addition to the requirements of these specifications, no on-site disposal shall take place in these counties without appropriate notice to the Regional Office of the NYSDEC. In the Adirondack Park, construction and demolition debris shall only be deposited in a landfill under a permit issued by the Adirondack Park Agency.

B. Non-Hazardous Solid Waste. Non-hazardous solid waste includes, but is not limited to: office trash, garbage and roadside litter. The Contractor may collect and store non-hazardous solid waste on the project site in transfer containers or other appropriate containers pending transportation to a legally permitted solid waste management facility. The Contractor shall meet the following conditions:

- Waste management activities shall be controlled to prevent odors and other nuisance conditions.
- Putrescible solid waste shall be removed when transfer containers are full, or weekly, whichever comes first.
- Non-putrescible solid waste may be collected and stored on the site in a transfer or other appropriate container not longer than 45 days.

C. Non-Hazardous Industrial Waste. Non-hazardous industrial waste includes, but is not limited to: friable asbestos, pavement marking waste, petroleum contaminated soil, appliances, tires, empty drums and empty fuel tanks. These wastes require disposal at permitted solid waste management facilities or may be used in applications that have received generic or case-specific beneficial use determinations from the NYSDEC. Transport of these wastes off site in shipments exceeding 220 kilograms requires a waste transporter permit issued by NYSDEC.

1. Asbestos. Friable and nonfriable asbestos containing materials (ACM) shall only be
handled or packaged for disposal by a Department of Labor (NYSDOL) certified asbestos handler. Friable asbestos waste shall only be transported by a permitted waste transporter under a waste shipment record and disposed of at a permitted waste management facility approved for friable asbestos.

2. **Pavement Marking Wastes.** Removed pavement markings, including the pavement material and debris containing the removed markings shall be disposed of as industrial solid waste, at permitted facilities, typically a municipal landfill. Asphalt and cement concrete containing incidental markings, however, are considered C&D and shall be disposed of accordingly. Pavement marking waste should be collected by typical construction methods such as sweeping and/or vacuuming. A permitted waste transporter is required for transport of over 500 pounds of waste within a single load to a disposal facility. Yellow pavement marking products can contain lead and chromium in the pigments. Testing by the Department of yellow marking waste debris indicated that although it contains lead and chromium, it did not meet the regulatory limit (leaching potential by the toxicity characteristic leaching potential (TCLP) test) for classification as a hazardous waste and would therefore be considered a non-hazardous industrial waste.

Pavement marking wastes, including millings with adhering pavement material and road debris generated by cleaning and removal operations are non-hazardous industrial solid waste and shall be disposed of at permitted solid waste management facilities. Pavement marking wastes shall be collected for disposal by typical construction methods such as sweeping and/or vacuuming.

Yellow pavement marking products may contain lead and chromium in the pigments, and solid waste management facilities may question whether pavement marking wastes are regulated hazardous wastes. Through analytical testing and knowledge of the waste, the Department has determined that pavement marking wastes, as well as the dried pure paint samples, are not hazardous wastes.

3. **Petroleum Contaminated Soil.** Petroleum contaminated soil shall be disposed of as non-hazardous industrial waste at a permitted solid waste management facility or used in applications that have received generic or case-specific beneficial use determinations from the NYSDEC.

4. **Empty Drums or Containers that Previously Held a Known Hazardous Material.** In accordance with 6 NYCRR Part 371.1(h), drums and containers that have had the contents removed by common practices, have less than 25 mm of product residue on the bottom, and less than 3% of the original product are considered “empty” and nonhazardous, even if the material they previously contained would otherwise have been classified as a hazardous waste. This does not apply to drums or containers that held acutely hazardous wastes. Empty drums and containers shall be recycled or disposed of at a permitted waste management facility. Empty containers may be returned to the manufacturer, sent to a reconditioner or handled as scrap metal, cardboard, etc. and are exempt from waste transporter requirements when destined for such reuse.

D. **Hazardous Waste.** Hazardous wastes are those wastes that are specifically “listed wastes” per 6 NYCRR 371 and/or those that display hazardous wastes characteristics for ignitability, corrosivity, reactivity and/or toxicity.

1. **Generator Status.** Unless specifically noted otherwise in the contract documents, the Department will require generation of more than 100 kg of hazardous waste per month to be included in the definition of, and compliance with the regulations governing, a Large Quantity Generator.

   a. Conditionally Exempt Small Quantity Generators (CESQG). Federal and State
hazardous waste regulations classify a CESQG as one that generates less than 100 kilograms of hazardous waste per month and stores less than 1,000 kilograms of hazardous waste.

b. Small Quantity Generator (SQG). Federal and State hazardous waste regulations classify an SQG as one that generates between 100 and 1,000 kilograms of hazardous waste per month and stores less than 6,000 kilograms of hazardous waste.

c. Large Quantity Generator (LQG). Federal and State hazardous waste regulations classify an LQG as one that generates more than 1000 kg of hazardous waste per month.

2. Hazardous Waste Requirements. The Contractor shall meet the following hazardous waste requirements:

a. Waste shall be properly packaged, with a written description and labeled as hazardous.

b. Waste shall be inspected at least weekly while stored on site.

c. Waste shall be shipped by a permitted waste transporter with a hazardous waste manifest and required documentation.

d. Waste shall be disposed of at a permitted hazardous waste treatment/disposal facility.

e. Waste shall be removed within 90 days after generation, unless a specific item requires removal sooner.

f. Hazardous waste shall be stored on the site of generation until manifested and shipped for disposal. The only exceptions for this are for CESQG wastes which may be temporarily relocated to non-permitted facilities.

g. Preparedness and prevention features and contingency planning and emergency procedures shall be developed as per 6 NYCRR 373-3.3 and 373-3.4, respectively.

h. Personnel must be trained in hazardous waste management procedures relevant to the positions in which they are employed.

i. Appropriate security shall be provided for hazardous wastes while stored on site.

SECTION 108 - PROSECUTION AND PROGRESS

108-01 START AND PROGRESS OF WORK.

A. Project Schedule. The contractor shall within five days after date of commencement of work, or within such time as determined by the Regional Director, prepare and submit to the Engineer for approval, a progress schedule showing the order in which the contractor proposes to carry on the work, the date on which it will start the major items of work (including but not limited to excavation, drainage, paving, structures, mobilization, soil erosion and sediment control, etc.) and the critical features (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The chart shall show the order in which the contractor proposes to carry on the work. The chart shall be in a suitable scale to indicate graphically the total percentage of work scheduled to be completed at any time. The Department may require that the progress schedule, at a minimum, include the following items: (a) major work items and activities to be performed; (b) seasonal weather limitations; (c) time and money curve, and (d) phase duration or milestone events, if applicable.

The purpose of this scheduling requirement is to ensure adequate planning and execution of the work and to evaluate the progress of the work.

Approval of the progress schedule shall not be construed to imply approval of any particular method or sequence of construction or to relieve the Contractor of providing sufficient materials, equipment and labor to guarantee completion of the project in accordance with the contract proposal, plans and specifications. Such schedule may be utilized to facilitate the State's inspection and coordination of construction activities. Approval shall not be construed to modify or amend the agreement or the date of completion therein.

At the end of each payment estimate period, or at such intervals as directed by the Engineer,
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the Department may request that the Contractor shall (1) adjust the chart to reflect any changes in the contract work, completion time, or both, (2) enter on the time and money curve the total percentage of work actually in place, and (3) submit three copies of the adjusted chart to the Engineer.

**B. Project Schedule Updates.** If the specified work falls behind that schedule, the Contractor shall take such actions as necessary to improve its progress. If the Contractor is behind schedule any month, the Contractor shall indicate what measures it will take in the next thirty (30) days to put the work back on schedule so as to meet the contract completion date specified in the contract. The Contractor shall not be entitled to any additional compensation unless provided for in other provisions of the contract on account of the requirements to put the work back on schedule. In preparing the revised schedule, the Contractor shall consider increasing its work force, construction plant and equipment, or the number of work shifts, etc. If the Engineer finds the proposed plan not acceptable, he/she may require the Contractor to submit a new plan. The Department may request that progress meetings be held by the Contractor at least on a monthly basis and be attended by the Engineer who shall monitor the Contractor's progress and performance.

**C. Obligation to Progress the Project.** The Contractor shall employ and supply a sufficient force of workers, materials and equipment and shall prosecute the work with such diligence so as to maintain the rate of progress indicated on the progress schedule to prevent work stoppage and ensure completion of the project within the contract time. Any additional or unanticipated costs or expense required to maintain the schedule shall be solely the Contractor's obligation and shall not be charged to the Department unless provided for in other provisions of the contract.

When requested by the Regional Director, the Contractor shall furnish weekly work schedules indicating number of personnel, kind of equipment and location and nature of the work to be performed.

**D. Failure to Submit Project Schedule.** If the Contractor fails to submit a progress schedule within the time period described or any revision or update when required, the Engineer may withhold approval of progress payment estimates pursuant to Article 8 of the contract until such time as the Contractor submits the required progress schedule.

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**108-02 DATE OF COMPLETION AND CLOSING.** All work to be performed under the contract shall be completed within the time stated in the Agreement for the project or within such extended time for completion as may be granted by the Commissioner.

Whenever the Commissioner shall deem it necessary that any portion or certain portions of the work shall be progressed in any particular manner or that any such portion or portions of the work shall be completed pursuant to a certain sequence or schedule and before the date of completion of the entire contract, the Contractor shall punctually comply with the related instructions, dates, and periods of time.

If, during the progress of the work, it should become necessary, because of the lateness of the season, to stop the work, then the Contractor shall open proper draining ditches, erect temporary structures where necessary, prepare the project so that there will be a minimum interference with traffic, set up and maintain a competent organization, as directed by the Engineer, to keep the contract in first class condition for traffic, and take every precaution to prevent any damage or unreasonable deterioration of the work during the time it is closed.

**108-03 FAILURE TO COMPLETE WORK ON TIME.** For each calendar day that any work shall remain uncompleted after the contract date specified for the completion of the work provided for in the contract, the amount per calendar day specified in Table 108-1, Schedule of Liquidated Damages, will be deducted from any money due the Contractor, not as a penalty but as liquidated damages; provided however that due account shall be taken of any adjustment of the contract time for completion of the work as provided for elsewhere in the specifications. Liquidated Damages for special or very large
contracts will be specified in the Contract Proposal. Liquidated Damages will not apply to Landscaping Contracts containing no on-road pay items.

Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the State of any of its rights under the contract.

The Commissioner of Transportation may waive such portions of the liquidated damages as may accrue if he/she deems the work is in such condition as to be safe and convenient for use by the traveling public.

The Contractor is responsible and liable for said liquidated damages even in the event that the Contractor abandons the performance of the contract or the Contractor’s employment is terminated pursuant to the provisions of this contract.

The assessing of liquidated damages shall be in addition to engineering charges as provided for in §108-04, Extension of Time.

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108-04 EXTENSION OF TIME. When the work embraced in the contract is not completed on or before the date specified therein, all appropriate engineering and inspection expenses incurred by the State, its consultants and inspection agencies, and by railroad companies, from the scheduled contract completion date to the final date of completion of the work, may be charged to the Contractor. When assessed, the charges shall be deducted from any moneys due the Contractor.

Before assessing such charges, the Department will give due consideration to factors attributing to such delay due to extenuating circumstances beyond the control of the Contractor limited to the following:

A. The work or the presence on the contract site of any third party, including but not limited to that of other contractors or personnel employed by the State, by other public bodies, by railroad, transportation or utility companies or corporations, or by private enterprises, or any delay in progressing such work by any third party except as indicated or disclosed in the contract documents or ordinarily encountered or generally recognized as inherent in the work.

B. The existence of any facility or appurtenance owned, operated, or maintained by any third party, except as indicated or disclosed in the contract documents or ordinarily encountered or generally recognized as inherent in the work.

C. The act, or failure to act, of any public or governmental body, railroad, transportation or utility...
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companies or corporations, including, but not limited to, approvals, permits, restrictions, regulations or ordinances not attributable to a Contractor’s submission, action or inaction or Contractor’s means and methods of construction.

D. Restraining orders, injunctions, or judgments issued by a court not caused by a Contractor’s submission, action or inaction or Contractor’s means and methods of construction.

E. Any industry-wide labor boycotts, strikes, picketing or similar situations, as differentiated from jurisdictional disputes or labor actions affecting a single or small group of contractors or suppliers.

F. Any industry-wide shortages of supplies or materials required by the contract work, as differentiated from delays in delivery by a specific or small group of suppliers.

G. Unusually severe storms of extended duration or impact, other than heavy storms or climatic conditions which could generally be anticipated by the bidders, as well as floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides, or other catastrophes.

H. Determinations by the Department to open certain sections of the project to traffic before the entire work is completed.

I. Major unanticipated additional work which significantly affects the scheduled completion of the contract.

J. Contract quantities beyond 125% of the original contract quantity, additional contract work, extra work, delays in the review or issuance of orders-on-contract, or field change sheets or delays beyond the established time periods for review and approval for shop drawings, which significantly affect the overall completion of the contract.

K. Failure of the State to provide individual rights-of-way parcels for an extended period of time beyond that indicated by the contract if such unavailability, as determined by the Commissioner, significantly affects the scheduled completion of the contract.

L. Any situation which was beyond the contemplation of the parties at the time of entering into the contract.

M. Award of the contract by the State more than forty-five (45) days beyond the letting date.

N. Situations covered by §109-16 A.

Such charges will be assessed, however, in cases where the work has been unduly delayed by the Contractor because of unwarranted reasons, inefficient operation, or for any other reason for which the Department determines the Contractor to be liable. Reasonable time necessary for reviews by the State or its agents of shop drawings, for changes or additions to the work to meet field conditions which do not significantly affect the scheduled completion of the contract, delays incurred by seasonal and weather limitations, localized labor actions and shortages of supplies or materials, and other situations which should be anticipated are neither compensatory nor eligible for extensions of time without the assessment of engineering and inspection charges, except as provided for under §109-16.

108-05 SUBLETTING OR ASSIGNING THE CONTRACT. The Contractor shall perform with its own organization contract work amounting to not less than 50 percent of the original total contract bid price, except that any items designated by the State as “Specialty Items” may be performed by subcontract and the amount of any such “Specialty Items” so performed may be deducted from the original total contract bid price before computing the amount of work required to be performed by the Contractor with its own organization. The contract amount upon which the 50 percent requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the Contractor under the contract provisions.

• “Its own organization” shall be construed to include only workers employed and paid
directly by the Contractor and equipment owned or rented by it, with or without operators.

- "Specialty Items" shall be construed to be limited to work that requires specialized knowledge, skill or equipment not ordinarily available in contracting organizations qualified to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

The Contractor shall be responsible for all work performed by Subcontractors, Manufacturers, Fabricators, Material Suppliers and any other parties in the performance of the contract. Contract work shall be performed under a subcontract only after approval by the Regional Director. Work shall be performed only by the subcontractor specifically approved by the Regional Director. Work shall not be assigned by the subcontractor to a lower tier subcontractor. Violations of the aforementioned will result in no payment by the State for the completed work.

A. Subcontractor Approval.

Approval of subcontractors is required for:

- The on-site completion of items of work as defined in the contract documents.
- The on-site maintenance of previously furnished and installed products.
- The delivery of materials to the project site and incorporation directly into the work by the supplier's work force in such a manner that no further handling or manipulation of the material is necessary in order to conform with the construction details of the appropriate specification item.

Approval of subcontractors excludes:

- Manufacturers, Fabricators and Material Suppliers who do not incorporate supplies or materials directly into the contract work.
- The on-site completion of a portion of the work that does not constitute a complete contract item, and that occurs over less than an aggregate of 5 days on the contract site.
- Specialized work which is not accounted through labor, equipment and materials, such as professional fees, testing fees, dumping fees, utility charges

B. Approval Procedure. The Contractor shall submit a Form AAPHC-89 (Part 2), Approval to Subcontract for approval by the Regional Director. Subcontractors will not be approved by the Department until such time as the Department has received a completed Form CCA-1-1, New York State Uniform Contracting Questionnaire.

C. D/M/WBE Policy. In the solicitation of subcontractors to perform work under this contract, prior to bidding or entering into any commitments for subcontracting or for purchase of supplies, materials or leasing of equipment, the Contractor shall solicit participation of disadvantaged/minority/women's business enterprises in accordance with the utilization goals published in the contract documents, and in accordance with the provisions of §102–21 or §102–22, as applicable.

D. Subcontract Provisions. All subcontracts shall be in writing and shall contain all pertinent provisions of the prime contract in regard to Federal and State Laws and Regulations. All subcontractors shall provide the Engineer with weekly payroll statements in accordance with §102–10. All subcontractors shall maintain insurance coverages as required by §107-06.

E. Additional Requirements. Additional requirements applicable to subcontractors, Manufacturers, Fabricators, Material Suppliers and other entities involved in contract work regarding supplier approvals, payment of prevailing wages, certified payrolls and participation of disadvantaged/minority/women's business enterprises shall be in accordance with the applicable
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sections of these specifications, or as contained in the contract documents.

108-06 COMMENCEMENT OF ACTIONS ON STATE PUBLIC WORKS CONTRACTS. In accordance with Section 138-a of the State Finance Law, the time within which an action on this contract, against the Contractor, must be commenced shall be computed from the date of completion of the physical work. The Contractor may notify the Department in writing that such physical work has been completed by specifying a completion date, which date shall be no more than 30 days previous to the date of such notice, in which case the completion date set forth in such notice shall be deemed to be the date of completion of the physical work unless the Department, within 30 days of receipt of such notice, notifies the Contractor in writing of its disagreement.

In the event the Contractor fails to send a notice provided for herein, or the State disagrees, then the date of completion of the physical work shall be determined in any other manner provided by law. If the Contractor elects to send such a notice, it shall be sent by certified mail to:

New York State Department of Transportation
Office of Legal Affairs
1220 Washington Avenue
Albany, New York 12232 M.C. 0509

The Department hereby disagrees with any date selected by the Contractor pursuant to Section 138-a of the State Finance Law which is earlier than the date of contract final acceptance as determined by the Commissioner or his/her designee. The provisions of Section 138-a shall in no way modify the duties and obligations of the Department to comply with Article eleven-A, of the State Finance Law (prompt payment legislation).

SECTION 109 - MEASUREMENT AND PAYMENT

109-01 ESTIMATES AND PAYMENT. In computing amounts in estimates or work done the unit prices will be used. All estimates including the final, will be made for actual quantities of work performed and materials placed in accordance with the requirements contained in the specifications, contract plans and standard sheets (except as provided under §109-04, Partial Payments) as determined by the measurements of the Engineer, and the resulting quantities involved in any contract shall be accepted as final, conclusive and binding upon the Contractor. For computation of the quantities of earthwork to be paid for under the various items of the contract, the planimeter shall be considered one instrument of acceptable precision, and the quantities computed from areas obtained by its use shall be accepted by all parties hereto as accurate. However, arithmetical computations, utilizing any type of computing device and software (including mainframe and microcomputers) shall also be considered instruments of acceptable precision. The choice of instrument shall be that of the Engineer and may vary by contract as deemed appropriate.

109-02 FINAL ADDITIONS OR DEDUCTIONS. Upon the completion of the required work as shown in the plans and specifications, should the final estimate of quantities show either an increase or decrease from the approximate estimate of quantities, then such variations will be computed at the unit prices bid, unless adjusted and a final agreement will be made respectively adding or deducting this amount from the gross sum bid as modified by orders-on-contract.

109-03 PAYMENTS ON CONTRACT. Payments to the Contractor for work satisfactorily performed will be made monthly upon the percentage basis prescribed by Subdivision 7 §38 of the Highway Law. No monthly estimate will be rendered unless the value of the work done equals or exceeds 5% of the Contract Amount or $1000, whichever is the lesser. Semi-monthly estimates may be rendered provided the value of the work performed in a two week interval is in excess of fifty thousand dollars or if, in the opinion of the Commissioner, it is to the best interests of the State to do so.
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As set forth in supplemental information to bidders (CONR-91), this contract may be funded by monies from other governmental or non-governmental entities which may include municipalities, counties, towns, villages, or authorities. If the contract is funded by monies from the New York State Thruway Authority as set forth in Supplemental Information Available to Bidders, (CONR 91), separate payment may be made by both the State of New York and the New York State Thruway Authority.

The attention of persons intending to make proposals is specifically called to the provisions of Section 70 and 71 of the Lien Law and Section 1302-C of the Penal Law that apply to funds being received by a Contractor for a public improvement. These provisions declare that the funds received by the Contractor shall constitute trust funds in the hands of the Contractor and shall be applied first to the payment of certain claims.

No certificate approving or authorizing the first partial payment, or in the event there shall be no first partial payment, then no certificate approving or authorizing any final payment shall be made to a foreign Contractor unless such Contractor shall have furnished satisfactory proof that all taxes due by such Contractor under the provisions of Articles 9, 9A, 16 and 16A of the Tax Law have been paid. The certificate of the State Tax Commission to the effect that all such taxes have been paid shall be conclusive proof of the payment of such taxes.

The term "foreign Contractor" as used in the preceding paragraph means, in the case of an individual, a person who is not a resident of this State; and in the case of a partnership, one having one or more partners who is not a resident of this State; and in the case of a corporation, one not organized under the laws of this State.

Section 139-f(2) of the State Finance Law requires payment by the Contractor to subcontractors or materialmen within 15 days from the date of receipt of payment from the State. Payment by the Contractor to subcontractors or materialmen shall represent the value of work performed and/or materials furnished and reflect the percentage of work completed or materials furnished by the subcontractor or materialmen and be based upon the actual value of the subcontract or purchase order. The Contractor may deduct an amount necessary to satisfy any claims, liens or judgments against a subcontractor or materialman which have not been fully discharged and may deduct retainage in accordance with said section.

The Contractor shall maintain an accounting system acceptable to the Department to track payments made by the State to the Contractor and payments made by the Contractor to each subcontractor, Manufacturer, Fabricator or Material Supplier by item and by date, for the purpose of enabling the Commissioner to audit the payment provisions of this subsection. The system shall be able to provide data necessary for the completion of Department Form AAP-21c, Contractor Report of Contract Payments. Form AAP-21c shall include a certification that subcontractors, Manufacturers, Fabricators and Material Suppliers have been paid with any exceptions noted and explained.

Section 179 of the State Finance Law requires the Department to make payment on highway construction projects within certain time frames. If the Department unjustifiably fails to pay within the prescribed time, it may be required to pay interest for each day in excess of the prescribed time.

In order to enable the Department to process the payment properly and expeditiously the Contractor is advised that the certified weekly payroll statements for the Contractor and each subcontractor, Form AAP-21c, and other required documents and submissions, as may be appropriate to this contract, are considered to be necessary to enable the processing of the payment as described above.

109-04 PARTIAL PAYMENTS. Upon application by the contractor, and approval by the Regional Director, payments for the actual cost of certain materials may be made to the contractor prior to incorporation of such material in the permanent work.

A. To be eligible for partial payment, materials must meet all of the following conditions:
   1. Inclusion on the listing later in this section;
   2. Have a minimum material cost of five thousand dollars ($5,000.00);
   3. Be materials which will be incorporated into permanent work;
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4. Be in a condition which is ready for on-site installation without further fabrication or processing;
5. Be delivered and stored at the site of the work or at a site and in a manner approved by the Regional Director; and
6. Be materials which will be stored a minimum of 60 days.

Note: Individual components of an item or related items may be combined to meet the minimum material cost.

B. With application for partial payments, the contractor shall provide documentation as follows:
1. Bill(s) of sale or vouchers indicating the actual dollar value paid by the contractor for the materials as stored;
2. Certification of Title showing that title to the materials, without encumbrances, is in the name of the contractor and that title is warranted to the Department of Transportation;
3. Documented evidence of acceptability of the materials; and
4. If the materials are stored on private property, a release and waiver covering such materials, and providing access to the storage site, which release and waiver shall be executed by the property owner in favor of the New York State Department of Transportation or its agents.

When applying for partial payment of products which are claimed to be in short supply or unique to an individual project, the contractor shall include documentation supporting that claim, to the satisfaction of the Regional Director.

The amount of partial payments shall not exceed the total invoice amount for stored materials, nor shall the partial payment for materials relating to any contract work item exceed eighty five percent (85%) of the unit price for that item. The quantity of material for which payments are made shall not exceed the estimated contract quantity for that item.

The making of partial payments shall not be deemed to be a final acceptance of materials, nor shall it relieve the contractor of responsibility for such materials. The contractor shall be responsible for assuring that only those materials which comply with the specifications are incorporated into the project.

All costs associated with handling, transportation and storage of materials; including any storage site rental, security, and weather protection; shall be borne by the contractor and included in the prices bid for contract work. Any materials, other than those which are determined by the Regional Director to be unique to the project, which are not incorporated into the work shall remain the property of the contractor. Partial payments made for such unused materials shall be withdrawn with no further obligation by the State.

LIST OF MATERIALS

- Iron, Steel and Aluminum products (including bridge bearings and all metal components of railings and bridge superstructures);
- Precast and Prestressed Concrete products;
- Pipe and Underdrain products;
- Concrete and Stone curb or masonry products;
- Concrete, Steel and Timber piles and appurtenances;
- Timber products;
- Traffic Signal, Traffic Control, Signing and Lighting components;
- Cable, Wire and Conduit;
- Impact Attenuator components;
- Materials in short supply; or
- Materials manufactured to meet specific, unique requirements of the project (to be determined by the Regional Director)