

Section 107

1 107-4 PATENTED DEVICES, MATERIALS AND PROCESSES

2 If the Contractor employs any design, device, material, or process covered by letters of patent
3 or copyright, he shall provide for such use by suitable legal agreement with the patentee or
4 owner. The Contractor and his Surety shall indemnify and save harmless the Department
5 from any and all claims for infringement by reason of the use of such patented design, device,
6 material, process, trademark or copyright and shall indemnify and save harmless the
7 Department from any costs, expenses and damages which it may be obligated to pay at any
8 time during the prosecution or after the completion of the work by reason of any alleged
9 infringement.

10 107-5 ENCROACHMENT ON RIGHT OF WAY

11 Any entity wishing to encroach on highway right of way shall secure a written permit from
12 the Department. The Contractor is not authorized to allow any entity to perform any work
13 within the limits of the project unless such work has been authorized in writing by the
14 Engineer.

15 When so directed by the Engineer, the Contractor shall make any repairs necessary due to
16 such encroachments and such work will be paid as extra work.

17 107-6 FEDERAL PARTICIPATION

18 When the United States Government pays all or any portion of the cost of the work, the
19 Federal laws authorizing such participation and the rules and regulations made pursuant to
20 such laws shall be observed by the Contractor. The work will be subject to the inspection of
21 the representative of such Federal agencies as are created for the administration of these laws.
22 The Contractor shall have no right to make the Federal Government a party to any court
23 action solely by reason of its participation in the cost of the work or by reason of its
24 inspection of the work.

25 107-7 SANITARY PROVISIONS

26 The Contractor shall provide and maintain in a neat, sanitary condition such accommodations
27 for the use of employees as may be necessary to comply with the requirements of the State
28 and local Boards of Health, or of other bodies or tribunals having jurisdiction. Control and
29 manage disposal of sanitary waste such that no adverse impacts occur to water quality.

30 107-8 PUBLIC CONVENIENCE AND SAFETY

31 The Contractor shall at all times conduct his work as to insure the least possible obstruction to
32 traffic. The safety and convenience of the general public and the residents along the highway,
33 and the protection of persons and property, shall be provided for by the Contractor as
34 specified in Section 150.

35 107-9 COORDINATION WITH RAILWAY

36 All work to be performed by the Contractor on railway right of way shall be performed in
37 accordance with the contract and in a manner satisfactory to the railway company and shall be
38 performed at such times and in such manner as not to unnecessarily interfere with the
39 movement of traffic upon the track of the railway company. The Contractor shall use all care
40 and precautions to avoid accidents, damage, or unnecessary delays or interference with the
41 railway company's traffic or other property. The Contractor shall carry such railroad
42 protective insurance and public liability and property damage insurance as may be stipulated
43 in the contract. The Department shall not be responsible for any damage or injury to the
44 railway company's traffic or property caused by the Contractor.

1 When the Contractor is required by the contract to transport materials or equipment across the
2 tracks of any railway or to perform work on railway right of way, the Department will obtain
3 any necessary written authority from the railway company for the establishment of a railway
4 crossing or for the performance of work on railway right of way. The Contractor will not be
5 required to bear the cost of any watchman service or flagging protection necessary due to such
6 operations, as the railway company will be reimbursed directly by the Department for the cost
7 of such work.

8 In case the Contractor elects or finds it necessary to transport materials or equipment across
9 the tracks of any railway at any point where a crossing is not required by the contract or at any
10 point other than an existing public crossing, he shall obtain specific written authority from the
11 railway company for the establishment of a private railway crossing and shall bear all costs in
12 connection with such crossing, including installation, drainage, maintenance, any necessary
13 insurance, watchman service, flagging protection and removal of such private railway
14 crossing.

15 **107-10 WORK IN, OVER OR ADJACENT TO NAVIGABLE WATERS**

16 All work in or over navigable waters shall be in accordance with conditions contained in the
17 permit obtained by the Department from the authority granting the permit. These conditions
18 will be included in the contract. The work shall be performed in such manner so as not to
19 interfere with navigation of the waterways unless approval therefor is obtained from the
20 authority granting the permit. The Department shall not be responsible for any damage or
21 injury to entities upon or adjacent to navigable waters caused by the Contractor.

22 The Contractor shall prepare drawings necessary to obtain any addenda that may be required
23 for his operations that are not included in the Department's permit. He shall coordinate their
24 submission with the Engineer.

25 **107-11 PROTECTION AND RESTORATION OF PROPERTY**

26 The Contractor shall be responsible for the protection from his activities of all public and
27 private property on and adjacent to the work and shall use every reasonable precaution
28 necessary to prevent damage or injury thereto. He shall use suitable precautions to prevent
29 damage to pipes, conduits and other underground structures and to poles, wires, cables and
30 other overhead structures.

31 The Contractor shall protect carefully from disturbance or damage all land monuments and
32 property markers until the Engineer has witnessed or otherwise referenced their location and
33 shall not remove them until directed.

34 The Contractor shall be responsible for the removal, preservation and resetting of all
35 mailboxes disturbed by the construction operations. The mailboxes and their supports, when
36 reset, shall be left in as good a condition as they were before removal. The Contractor will
37 not be required to furnish new material except as required to repair damage resulting from
38 construction operations.

39 The Contractor will be held responsible for all damage or injury to property of any character
40 resulting from any act, omission, negligence, or misconduct in the prosecution of the work.
41 When any direct or indirect damage or injury is done to public or private property by or on
42 account of any act, omission, negligence, or misconduct in the execution of the work, he shall
43 either restore at his own expense such property to a condition similar or equal to that existing
44 before such damage or injury was done, or shall make good such damage or injury in
45 a manner acceptable to the owner of the damaged property and to the Department. In case of
46 failure on the part of the Contractor to restore such property or make good such damage or
47 injury, the Department may, at the Contractor's expense, repair, rebuild, or otherwise restore
48 such property in such manner as the Engineer may consider necessary.

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1 107-12 CONTROL OF EROSION, SILTATION AND POLLUTION

2 (A) General

3 The Contractor shall take whatever measures are necessary to minimize soil erosion and
4 siltation, water pollution and air pollution caused by his operations. The Contractor shall
5 comply with the applicable regulations of all legally constituted authorities relating to
6 pollution prevention and control. The Contractor shall keep himself fully informed of all
7 such regulations that in any way affect the conduct of the work and shall at all times
8 observe and comply with all such regulations. In the event of conflict between such
9 regulations and the specifications, the more restrictive requirements shall apply.

10 The Engineer will limit the area over which clearing and grubbing, excavation, borrow
11 and embankment operations are performed whenever the Contractor's operations do not
12 make effective use of construction practices and temporary measures which will
13 minimize erosion, or whenever construction operations have not been coordinated to
14 effectively minimize erosion, or whenever permanent erosion control features are not
15 being completed as soon as permitted by construction operations.

16 Following completion of any construction phase or operation, on any graded slope or any
17 area greater than one acre, the Contractor shall provide ground cover sufficient to restrain
18 erosion within 21 calendar days or within a time period specified by the
19 NCG 010000 Construction Permit. The ground cover shall be either temporary or
20 permanent and the type specified in the contract.

21 (B) Erosion and Siltation Control

22 The Contractor shall exercise every reasonable precaution throughout the life of the
23 project to prevent the eroding of soil and the silting of rivers, streams, lakes, reservoirs,
24 other water impoundments, ground surfaces or other property.

25 Before suspension of operations on the project or any portion thereof, the Contractor shall
26 take all necessary measures to protect the construction area, including, but not limited to,
27 borrow sources, soil type base course sources and waste areas from erosion during the
28 period of suspension.

29 Unless otherwise approved in writing by the Engineer, construction operations in rivers,
30 streams and water impoundments shall be restricted to those areas where channel changes
31 are shown in the plans and to those areas which must be entered for the construction or
32 removal of temporary or permanent structures.

33 Excavated materials shall not be deposited, nor shall earth dikes or other temporary earth
34 structures be constructed, in rivers, streams, or impoundments. As an exception to the
35 above, confined earth materials will be permitted when approved in writing by the
36 Engineer.

37 Frequent fording of live streams with construction equipment will not be permitted;
38 therefore, temporary bridges or other structures shall be used wherever frequent stream
39 crossings are necessary. Unless otherwise approved in writing by the Engineer,
40 mechanized equipment shall not be operated in live streams except as may be necessary
41 to construct channel changes and to construct or remove temporary or permanent
42 structures.

(C) Coordination of Erosion Control Operations

Temporary and permanent erosion control measures shall be provided as shown in the plans or as directed by the Engineer. All permanent erosion control work shall be incorporated into the project at the earliest practicable time. Temporary erosion control measures shall be coordinated with permanent erosion control measures and all other work on the project to assure economical, effective and continuous erosion control throughout the construction and post construction period and to minimize siltation of rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces, or other property.

Temporary erosion control measures shall include, but not be limited to, the use of temporary berms, dikes, dams, drainage ditches, silt basins, silt ditches, slope drains, structures, vegetation, mulches, mats, netting, gravel, or any other methods or devices that are necessary. Temporary erosion control measures may include work outside the right-of-way or construction limits where such work is necessary as a result of construction such as borrow operations, haul roads, plant sites, equipment storage sites and disposal of waste or debris. The Contractor shall be liable for all damages to public or private property caused by silting or slides originating in waste areas furnished by the Contractor.

Materials for temporary erosion control measures shall have been approved by the Engineer before being used or shall be as directed by the Engineer. The Contractor shall acceptably maintain erosion control measures installed.

(D) Water and Air Pollution

Exercise every reasonable precaution throughout the life of the project to prevent pollution of ground waters and surface waters, such as rivers, streams and water impoundments. Do not discharge onto the ground or surface waters any pollutants such as chemicals, raw sewage, fuels, lubricants, coolants, hydraulic fluids, bitumens and any other petroleum products. Operate and maintain equipment on site in a manner as to prevent the potential or actual pollution of surface or ground waters of the State. Dispose of spent fluids in accordance with applicable Federal and State disposal regulations. Immediately clean up any spilled fluids to the extent practicable and dispose of properly.

Manage, control and dispose of litter on site such that no adverse impacts to water quality occur. Comply with all Federal, State or local air pollution regulations throughout the life of the project.

(E) Dust Control

The Contractor shall control dust throughout the life of the project within the project area and at all other areas affected by the construction of the project, including, but not specifically limited to, unpaved secondary roads, haul roads, access roads, disposal sites, borrow and material sources and production sites. Dust control shall not be considered effective where the amount of dust creates a potential or actual unsafe condition, public nuisance, or condition endangering the value, utility, or appearance of any property.

The Contractor will not be directly compensated for any dust control measures necessary, as this work will be incidental to the work covered by the various contract items.

(F) Application of Specifications

Article 107-12 shall apply to all construction operations. Further references and detailed requirements concerning erosion, siltation and pollution prevention and control are given in other sections of the *Standard Specifications* as supplements to the general requirements of this article.

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1 (G) Sanctions

2 In the event that temporary erosion and pollution control measures become necessary due
3 to the Contractor's negligence, carelessness, or failure to incorporate permanent erosion
4 control measures into the project at the earliest practicable time, such measures shall be
5 performed by the Contractor as directed by the Engineer at no cost to the Department. If
6 the Contractor fails to perform such measures as directed, the Engineer may have the
7 work performed in accordance with Article 105-16.

8 Failure of the Contractor to fulfill any of the requirements of this article may result in the
9 Engineer ordering the stopping of construction operations in accordance with
10 Article 108-7 until such failure has been corrected. Such suspension of operations will
11 not justify an extension of contract time.

12 Failure on the part of the Contractor to perform the necessary measures to control
13 erosion, siltation and pollution will result in the Engineer notifying the Contractor to take
14 such measures. In the event that the Contractor fails to perform such measures within
15 24 hours after receipt of such notice with adequate forces and equipment, the Engineer
16 may suspend the work as provided above, or may proceed to have such measures
17 performed with other forces and equipment, or both. No payment will be made to the
18 Contractor for the performance of this work and the cost of such work so performed will
19 be deducted from monies due the Contractor on his contract.

20 107-13 PROTECTION OF PUBLIC LANDS

21 In the execution of any work within or adjacent to any National or State forest, park or other
22 public lands, the Contractor shall comply with all regulations of all authorities having
23 jurisdiction over such forest, park or lands, governing the protection of public lands and the
24 carrying out of work within public lands and shall observe all sanitary laws and regulations
25 with respect to the performance of work in public lands. He shall keep the areas in an orderly
26 condition, properly dispose of all refuse and obtain permits for the construction and
27 maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools,
28 septic tanks and other structures in accordance with the regulations of the appropriate
29 authorities.

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

35 The Contractor shall obtain any construction permits that may be required for his operations,
36 which are not a part of the project, in accordance with the regulations of the appropriate
37 authorities.

38 107-14 RESPONSIBILITY FOR DAMAGE CLAIMS

39 The Contractor shall indemnify and save harmless the Board and its members and the
40 Department, its officers, agents and employees from all suits, actions, or claims of any
41 character brought for any injury or damages received or sustained by any person, persons, or
42 property by reason of any act of the Contractor, subcontractor, its agents or employees, in the
43 performance of the contract. The Contractor's liability to save harmless and indemnify shall
44 include, but not by way of limitation, the following:

45 (A) Damages or claims for the failure of the Contractor to safeguard the work;

46 (B) Damages or claims by reason of the failure of the Contractor to erect adequate barricades
47 and post adequate warnings to the public of such barricades;

48 (C) Any damage or claims caused through the Contractor's use of defective materials or by
49 the performance of defective work;

- 1 (D) Any claims by reason of the Contractor's infringement of patent, trademark, or copyright;
 2 (E) Any amounts paid by the Department by reason of the Contractor's failure to comply with
 3 or for violations of laws, ordinances, orders, or decrees;
 4 (F) Any damages or claims caused by blasting operations of the Contractor with or without
 5 proof of negligence on the part of the Contractor;
 6 (G) Damages or claims caused by the failure of the Contractor to protect private or public
 7 property pursuant to Article 107-11, including damages to public and private property
 8 caused by silting and slides from waste areas furnished by the contractor, without proof
 9 of negligence; and
 10 (H) Damages caused by the failure of the Contractor to control erosion in accordance with the
 11 contract.

12 In addition to any remedy authorized by law, the Department shall have a right to retain from
 13 monies due the Contractor, as the Department considers necessary until final disposition has
 14 been made of the following suits or claims:

- 15 (1) For all claims against the Department involving claims or damages that are the
 16 Contractor's responsibility under Section 107. The Contractor and the Surety shall
 17 remain responsible until such suits or claims against the Department have been
 18 settled and until the Department has been indemnified and saved harmless.
 19 (2) In case of claims by third parties against the Contractor involving tort liability for
 20 which the Department might be held liable for as a taking of property, or as a tort
 21 before the Industrial Commission. However, monies due the Contractor will not be
 22 retained provided the Contractor produces satisfactory evidence to the Department
 23 that he is adequately protected from such tort liability by public liability and property
 24 damage insurance. In all other cases involving claims or suits by third parties against
 25 the Contractor, amounts due the Contractor will not be withheld provided that the
 26 consent of the Surety is furnished and the Surety guarantees payment of any amounts
 27 for which the Contractor may be determined to be legally liable.
 28 (3) In cases of damage to property of the Department, such amounts necessary to pay for
 29 such damage.

30 In cases where claims are made or suits filed against the Board or its members and the
 31 Department, its officers, agents and employees, the Department may retain from any monies
 32 due the Contractor, an amount sufficient to indemnify such member of the Board or officer,
 33 agent or employee of the Department for any amounts which they may be held liable for but
 34 for which the Contractor is responsible under Section 107. In the event that there is not
 35 sufficient monies available from the final estimate, the Department may collect from the
 36 Contractor or its Surety amounts sufficient to indemnify such employee, agent or officer of
 37 the Department or member of the Board for such damages incurred.

38 **107-15 LIABILITY INSURANCE**

39 The Contractor shall be liable for any losses resulting from a breach of the terms of this
 40 contract. The Contractor shall be liable for any losses due to the negligence or willful
 41 misconduct of its agents, assigns and employees including any sub-contractors which causes
 42 damage to others for which the Department is found liable under the Torts Claims Act, or in
 43 the General Courts of Justice, provided the Department provides prompt notice to the
 44 Contractor and that the Contractor has an opportunity to defend against such claims. The
 45 Contractor shall not be responsible for punitive damages.

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1 The Contractor shall at its sole cost and expense obtain and furnish to the Department
2 an original standard Association for Cooperative Operations Research and
3 Development (ACORD) form certificate of insurance evidencing commercial general liability
4 with a limit for bodily injury and property damage in the amount of \$5,000,000 per
5 occurrence and general aggregate, covering the Contractor from claims or damages for bodily
6 injury, personal injury, or for property damages that may arise from operating under the
7 contract by the employees and agents of the Contractor. The required limit of insurance may
8 be obtained by a single general liability policy or the combination of a general liability and
9 excess liability or umbrella policy. The State of North Carolina shall be named as an
10 additional insured on this commercial general liability policy. The policy may contain the
11 following language as relates to the State as an additional insured: "This insurance with
12 respect to the additional insured applies only to the extent that the additional insured is held
13 liable for your or your agent's acts or omissions arising out of and in the course of operations
14 performed for the additional insured."

15 The Contractor shall maintain all legally required insurance coverage, including without
16 limitation, worker's compensation and vehicle liability, in the amounts required by law.
17 Providing and maintaining adequate insurance coverage is a material obligation of the
18 contractor and is of the essence of this contract. All such insurance shall meet all laws of the
19 State of North Carolina. Such insurance coverage shall be obtained from companies that are
20 authorized to provide such coverage and that are authorized by the Commissioner of
21 Insurance to do business in North Carolina. The Contractor shall at all times comply with the
22 terms of such insurance policies.

23 Upon execution of the contract, provide evidence of the above insurance requirements to the
24 Engineer. When required by the contract, the Contractor shall carry insurance of the kinds
25 and in the amounts specified therein in addition to any other forms of insurance or bonds
26 required under the terms of the contract, or any other insurance carried by the Contractor.

27 **107-16 OPENING SECTIONS OF PROJECT TO TRAFFIC**

28 If it is determined by the Engineer that the Contractor will not complete the work by the
29 completion date, intermediate completion date, or intermediate completion time, the Engineer
30 may notify the Contractor in writing that upon expiration of contract time or intermediate
31 contract time the project, or any portion thereof, will be open to traffic. On such sections that
32 are opened, the Contractor shall conduct the remainder of his operations so as to cause the
33 least obstruction to traffic. The Contractor shall not be relieved of his liability or
34 responsibility, shall not receive any additional compensation due to the added cost of the
35 work, nor shall he receive any extension of the completion date, intermediate completion date,
36 or intermediate completion time, by reason of such openings.

37 **107-17 CONTRACTOR'S RESPONSIBILITY FOR WORK**

38 Until final acceptance of the work by the Engineer, as evidenced in writing, the Contractor
39 shall have the charge and care thereof and shall take every precaution against injury or
40 damage to any part thereof by the action of the elements, or from any other cause, whether
41 arising from the execution or from the nonexecution of the work. The Contractor shall
42 rebuild, repair, restore and make good all injuries or damages to any portion of the work
43 occasioned by any of the above causes before final acceptance and shall bear the expense
44 thereof, except as provided in other sections of the Specifications. The Department will
45 reimburse the Contractor for the repair of the work due to actions of the elements of such
46 exceptional nature as to be contractually classified as Acts of God.

47 In case of suspension of work from any cause whatsoever, the Contractor shall be responsible
48 for all materials and shall properly store them, if necessary, and shall provide suitable
49 drainage of the roadway and erect necessary temporary structures at no cost to the
50 Department.

107-18 FURNISHING RIGHT OF WAY

The Department will be responsible for the securing of all necessary rights of way.

107-19 PERSONAL LIABILITY OF PUBLIC OFFICIALS

The Board and its members and the Department's officers, agents and employees shall not be held personally liable for any damages connected with the work, it being specifically understood in all such matters that they act solely as agents and representatives of the Board or the Department.

107-20 WAIVER OF LEGAL RIGHTS BY THE DEPARTMENT

Upon completion of the work, the Department will expeditiously make an inspection and notify the Contractor of acceptance. Such final acceptance and processing of the final estimate, however, shall not preclude or estop the Department from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Department be precluded or estopped from recovering from the Contractor or his Surety, or both, such overpayment as it may sustain, or by failure on the part of the Contractor to fulfill his obligations under the contract. A waiver on the part of the Department 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 Department for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Department's rights under any warranty or guaranty.

107-21 SAFETY AND ACCIDENT PROTECTION

The Contractor shall comply with all applicable Federal, State and local laws, ordinances and regulations governing safety, health and sanitation, and shall provide all safeguards, safety devices and protective equipment, and shall take any other needed actions, on his own responsibility, that are reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of the work covered by the contract.

All Contractors' personnel, all subcontractors and their personnel, and any material suppliers and their personnel shall wear a reflective vest or outer garment conforming to MUTCD at all times while on the project.

107-22 WAGES AND CONDITIONS OF EMPLOYMENT

The Contractor's attention is directed to the provisions and requirements of any and all public statutes that regulate hours or conditions of employment on public work. Such provisions and requirements that are appropriate, in accordance with the intent of the particular law, act, or statute, will be applicable to all work performed by the Contractor with his own organization and with the assistance of workmen under his immediate superintendence and to all work performed by subcontract. It shall be the responsibility of the Contractor to ascertain the appropriate application of such provisions and requirements to the work.

In addition to the general requirements of the various regulations referred to above, certain additional regulations and restrictions may be imposed that are peculiar to the particular work under the contract. In such cases, these regulations and restrictions will be included in the contract for the particular project involved.

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1 For projects that are financed wholly or in part with Federal funds, the minimum wage rates to
2 be paid to all mechanics and laborers employed on the project will be determined by the
3 U.S. Secretary of Labor. A schedule of such wage rates will be included in the proposal for
4 such projects. The Contractor shall provide at the job site at no cost to the Department
5 a weatherproof bulletin board covered with glass or rigid transparent plastic and shall display
6 thereon at all times the required federal aid posters with regard to employment and wages that
7 will be furnished to him. The bulletin board shall be located in a conspicuous place easily
8 accessible to all employees.

9 In the event that changes should occur in any of the regulations referred to in this article, or in
10 any application thereof to the work under contract, no additional compensation will be
11 allowed the Contractor as a result of such changes.

12 **107-23 LIABILITY TO THIRD PARTIES**

13 It is not intended by any of the provisions of any part of these specifications to make the
14 public or any member thereof a third party beneficiary hereunder, or to authorize anyone who
15 is not a party to a contract entered into pursuant to these specifications to maintain a suit for
16 personal injury or property damage otherwise than as authorized and provided by law.

17 **107-24 RIGHT OF THE CONTRACTOR TO FILE VERIFIED CLAIM**

18 If the Contractor fails to receive such settlement as he claims to be entitled to under the terms
19 and provisions of the contract, the Contractor may submit a written and verified claim for
20 such amounts he deems himself or his subcontractor entitled to under the terms and provisions
21 of the contract provided he has complied with the applicable provisions of the contract
22 including, but not limited to, giving written notice of intent to file a claim, keeping and
23 submission of cost records and the initial submission of a written claim within the specified
24 time period. The claim shall be submitted to the State Highway Administrator within 60 days
25 from the time the Contractor receives the final estimate as defined by Section 101 and shall be
26 submitted in accordance with NCGS § 136-29.

27 Submission of records by the Contractor and physical acceptance by the Department, during
28 the course of the project shall not be construed as an admission of liability by the Department
29 and shall be accepted by the Department for record keeping purposes only and not as
30 an acknowledgement of entitlement by the Contractor.

31 **107-25 HAZARDOUS, CONTAMINATED AND TOXIC MATERIAL**

32 When the Contractor's operations encounter or expose any abnormal condition that may
33 indicate the presence of a hazardous, contaminated, or toxic material, such operations shall be
34 discontinued in the vicinity of the abnormal condition and the Engineer shall be notified
35 immediately. Upon notification by the Contractor, the Engineer will investigate the work,
36 consult the GeoEnvironmental Section of the Geotechnical Engineering Unit and, if
37 necessary, suspend the work in accordance with Article 108-7. The presence of storage
38 drums or barrels; old or abandoned underground storage tanks; discolored earth, metal, wood,
39 etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or anything else that
40 appears abnormal may be indicators of hazardous, contaminated or toxic materials and shall
41 be treated with extraordinary caution as they are evidence of abnormal conditions.

42 The Contractor's operations shall not resume until so directed by the Engineer.

43 Disposition of the hazardous, contaminated, or toxic material will be made in accordance with
44 Federal, State and local requirements and regulations. Where the Contractor performs work
45 necessary to dispose of hazardous, contaminated, or toxic material, payment will be made at
46 the unit prices for pay items included in the contract that are applicable to such work. Where
47 the contract does not include such pay items, the Engineer may have the work performed by
48 others or the Contractor may perform the work in accordance with Article 104-7 for extra
49 work and the following paragraphs.

1 The Contractor shall employ a fully experienced and prequalified geoenvironmental firm to
2 oversee and document the disposal of contaminated material removed from within the project
3 right of way. The Contractor shall furnish and deliver to the Department 3 Contaminant
4 Removal Reports accompanied by all documents necessary to meet the laws, rules and
5 regulations of the environmental regulatory agency(ies) having jurisdiction over each
6 respective site from which contaminated materials are removed. Reports documenting the
7 Contractor's work and laboratory analyses of collected samples shall be submitted to the
8 Department within 30 calendar days after completion of the removal of the contaminated
9 materials. If the Contractor removes any underground storage tanks (UST), a UST Closure
10 Report shall be presented to the Department within 25 calendar days after receipt of
11 laboratory data. The Contractor shall not submit any reports directly to the regulatory
12 agencies. The Contractor shall provide to the Department a Certificate of Remediation from
13 the disposing/treating facility within 60 days after removal of the materials from the project
14 site unless alternate arrangements are approved in writing by the Department.

15 Contaminated material removed during construction shall be transported to a waste treatment
16 and disposal facility that is fully approved and permitted by all applicable environmental
17 regulatory agencies to receive, treat and/or dispose of the material. It shall be the Contractor's
18 responsibility to locate such a facility. Departmental approval of the specific facility
19 identified for use by the Contractor shall occur before removal of any materials from the
20 project limits. Contaminated material shall only be removed to the extent necessary to
21 complete a task or as directed by the Engineer. Remaining contamination shall be left in
22 place and documented in reports provided to the Department. The Contractor shall provide
23 the Department with all transportation manifests and certificates of acceptance from the
24 receiving disposal facility weekly. The Department will be the regulatory generator of all
25 waste excavated and removed from within its right of way. The Contractor, with the approval
26 of the Engineer, is authorized to sign all waste transportation and disposal manifests on behalf
27 of the Department.

28 The Contractor shall maintain qualified personnel on-site at all times during removal of
29 materials from within known areas of contamination for field screening and to monitor
30 ambient air quality. The qualified personnel shall be knowledgeable with the use of
31 an Organic Vapor Analyzer, Flame Ionization Detector, Photo Ionization Detector, or other
32 appropriate monitoring equipment. In the event that there is a need to stockpile contaminated
33 material, the Contractor shall stockpile all contaminated soil excavated from a parcel in
34 a location within the property boundaries of the source parcel in accordance with the Standard
35 Stockpile Containment Detail. If the volume of contaminated material exceeds available
36 space on site, the Contractor shall obtain a permit from the NCDENR UST Section for off-site
37 temporary storage.

38 The Contractor shall be entirely responsible for compliance with all OSHA, EPA, DOT,
39 DENR and local rules and regulations pertaining to excavation, transportation and
40 treatment/disposal of the contaminated material. Examples of such rules and regulations
41 include, but are not limited to, 29 CFR 1910 and 1926, 40 CFR 260 - 265,
42 49 CFR 173 and 178, 15A NCAC 13A North Carolina Hazardous Waste Management Rules,
43 NCGS § 130A-310 Inactive Hazardous Sites, the Federal Comprehensive Environmental
44 Response, Compensation and Liability Act (CERCLA) and the Federal Resource
45 Conservation and Recovery Act (RCRA). It must be noted that inclusion of this paragraph is
46 meant to highlight the Contractor's responsibility for regulatory compliance in all phases of
47 work on this project.

48 **107-26 FINES AND LEVIES AGAINST THE DEPARTMENT**

49 In the event there are fines or charges levied against the Department, actions taken by the
50 Department, or remediation required by the Department due to the contractor's negligence,
51 carelessness, or failure, due to violations charged to the Contractor, or due to the Contractor's
52 failure to comply with the contract, monies will be deducted from monies to be paid to the
53 Contractor on this project.