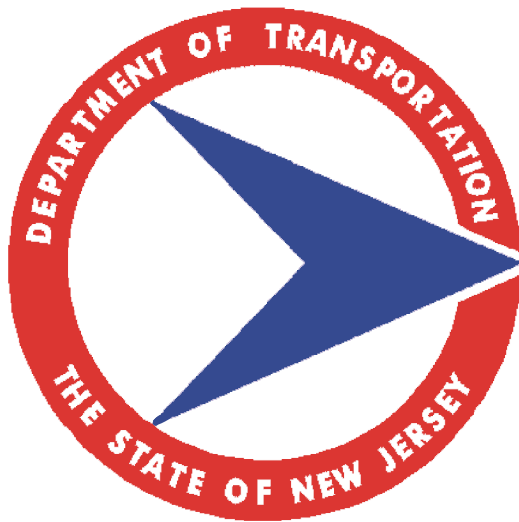


NEW JERSEY

DEPARTMENT OF TRANSPORTATION



Project Specifications

(Include Supplemental Specifications and Special Provisions)

**Lower Passaic River Dredging Pilot Study
Contract No. ESS000030**

August 2005

AUTHORIZATION OF CONTRACT

The Contract for this Project is authorized by the provisions of Title 27 of the Revised Statutes of New Jersey and supplements thereto, and Title 23 of the United States Code – Highways.

SPECIFICATIONS TO BE USED

Pages 1 to 76 inclusive for General and Technical Provisions.

State of New Jersey Equal Employment Opportunity for Contracts Funded by Wholly State Funds, pages 1 to 4 inclusive, dated April 2003.

Payroll Requirements for 100 Percent State Projects, dated December 1986, revised September, 1992.

Americans with Disabilities Act for 100 Percent State Funded Contracts, page 1, dated August 1993.

Equal Employment Opportunity Special Provisions Construction Contracts Funded by Wholly State Funds, pages 1 to 10 inclusive, dated April 2003.

Small Business Enterprise Utilization Attachment for 100% State Funded Contracts, pages 1 to 6 inclusive, dated March 2004.

The Contractor shall pay the minimum wage rates determined by the New Jersey Department of Labor.

State wage rates may be obtained from the New Jersey Department of Labor (Telephone: 609-292-2259) or by accessing the Department of Labor's web site at <http://www.nj.gov/labor/lsse/lspubcon.html> The State wage rates in effect at the time of award will be made a part of this Contract, pursuant to Chapter 150, Laws of 1963 (NJSA 34:11-56.25, *et seq.*).

In the event it is found that any employee of the Contractor or any subcontractor covered by the Contract, has been paid a rate of wages less than the minimum wage required to be paid by the Contract, the State may terminate the Contractor's or subcontractor's right to proceed with the Work, or such part of the Work, as to which there has been a failure to pay required wages and to prosecute the Work to completion or otherwise. The Contractor and its sureties shall be liable to the State for any excess costs occasioned thereby.

DIVISION 100 - GENERAL PROVISIONS

SECTION 101 - GENERAL INFORMATION

101.01 General.

The titles and headings of the Section, Subsections, and Subparts herein are intended for convenience of reference and shall not be considered as having bearing on their interpretation.

Working titles that have a masculine gender, such as “workman,” and “foreman,” are used in the Contract Documents for the sake of brevity, and are intended to refer to persons of either sex.

When a publication is specified, it refers to the most recent date of issue, including interim publications, before the date of the receipt of bids for the Project unless the issue as of a specific date or year is provided for.

Whenever a slope is indicated in the Specifications, it is given in horizontal to vertical dimensions. The horizontal will be indicated with an “H” and the vertical will be indicated with a “V.”

101.02 Abbreviations.

ASTM	American Society for Testing and Materials
DBE	Disadvantaged Business Enterprise
ESBE	Emerging Small Business Enterprise
EPA	Environmental Protection Agency of the United States Government
FED-STD	Federal Standard
FSS	Federal Specifications and Standards, General Services
MSDS	Material Safety Data Sheet
NJAC	New Jersey Administrative Code
NJDEP	New Jersey Department of Environmental Protection
NOAA	National Oceanic and Atmospheric Administration
NJDOT	New Jersey Department of Transportation
OSHA	Occupational Safety and Health Administration
ROW	Right-of-Way
UL	Underwriters Laboratories
USACE	United States Army Corps of Engineers
USCG	United States Coast Guard

101.03 Terms.

When the following terms are used in the Contract Documents, the intent and meaning shall be as follows:

ACCEPTANCE. The term “Acceptance” means the formal written acceptance, by the Commissioner, of the Project that has been completed in all respects according to the Contract Documents.

ACCEPTANCE TESTING. Testing conducted by the Engineer to measure the degree of compliance to the Contract Documents.

ADDENDA (Addenda or Addendum used interchangeably). The term "Addenda" means the written, graphic, or electronic information issued before the opening of bids that clarify, correct, or change the Contract Documents.

ADDITIONAL COMPENSATION. A monetary payment(s), sought by the Contractor, premised upon (1.) an adjustment or modification to the Contract pay item(s) for particular work or (2.) any or all forms of compensation over and above that which is specifically provided under the various individual Contract Pay Items or Contract payment provisions.

ADVERTISEMENT. The public announcement, as required by law, that invites bids for work to be performed or materials to be furnished.

AWARD. The term “Award” means the decision of the Department to accept the Proposal of the lowest responsible Bidder, subject to the execution and approval of a satisfactory Contract based thereon and bonds to secure the performance thereof, and such conditions as may hereinafter be specified or as may be specified or required by law.

BIDDER. The term “Bidder” means an individual, firm, partnership, corporation, or any acceptable combination thereof, acting directly or through a duly authorized representative, legally submitting a bid for the advertised work, and having been qualified to bid on the advertised work pursuant to the provisions of NJSA 27:7-35.1 *et seq.*, and regulations issued thereunder.

BY OTHERS. The term “by others” refers to a person, firm, or corporation other than the Contractor or its surety or persons, firms, or corporations in a contractual relationship with the Contractor or the surety, such as a subcontractor, supplier, fabricator, or consultant at any tier. “By others” shall include the Department or other public body.

CALENDAR DAY. Each and every day shown on the calendar.

CHANGE ORDER. The term “Change Order” means a written order issued by the Engineer to the Contractor after execution of the Contract authorizing one or more of the following:

1. Changes in the Work.
2. Adjustments in the basis of payment for the Work affected by the changes.
3. Adjustments in the Contract Time.

CLAIM. The Contractor has reason to believe it is entitled to additional compensation and/or an extension of contract time, in accordance with and subject to the Contract Documents and the provisions of the Contractual Liability Act, N.J.S.A. 59:13-1 *et seq.*, arising out of or relating to the happening of an event, thing or occurrence or an act or failure to act by the Engineer. A claim accrues when it arises, meaning when a situation or occurrence takes place or comes about which has or possesses the potential to support or become the basis for additional compensation and/or an extension of time.

COMMISSIONER. The term “Commissioner” means the Commissioner of Transportation of the Department of Transportation of the State of New Jersey, as created by law, acting directly or through duly authorized representatives, such representatives acting within the scope of the particular duties delegated to them.

COMPLETION. The term “Completion” means Completion of the Work. Completion shall occur when:

1. the Work has been satisfactorily completed in all respects according to the Contract Documents;
2. the Project is ready for use by the State to the degree required by the terms of the Contract, and;
3. the Contractor has satisfactorily executed and delivered to the Engineer all documents, certificates, and proofs of compliance required by the Contract Documents, it being understood that the satisfactory execution and delivery of said documents, certificates, and proofs of compliance is a requirement of the Contract.

COMPLETION OF THE CONTRACT. The event termed “Completion of the Contract”, under the Specifications and the Contractual Liability Act NJSA 59:13-1 *et seq.*, shall be deemed to have occurred as of the date the Contractor accepts or accepts with reservation of specific claims, in writing in accord with forms supplied by the Department, the Final Certificate issued by the Department or the 31st day after issuance of said Final Certificate by the Department, whichever event may be the first to occur.

COMPUTER DISK. The term "Computer Disk" means a diskette or CD-ROM that contains Expedite software Electronic Bidding System (EBS) file. This Computer Disk will produce a Price Proposal Form. The Computer Disk shall be used to prepare and print the Price Proposal Form.

The following is a listing of the microcomputer system equipment necessary to properly run the EBS program:

1. Personal computer with at least a 2.5 GHz processor.
2. Floppy diskette drive or CD-ROM optical drive
3. 512-MB RAM
4. 10 GB available hard disk space
5. Microsoft Windows XP or Windows 2000 operating system
6. Laser Jet or Ink Jet printer

The Department assumes no responsibility for the use of the Computer Disk. The Department will not be liable for any losses, damages, or problems that may arise from the use of the Computer Disk by the Contractor, even if such problems result in the rejection of the Contractor's bid. The Department will not be responsible for any bid item spreadsheet program on the Computer Disk that is not compatible with the Contractor's computer equipment or software. All liability for any damages caused by the use of the Computer Disk shall be borne by the Contractor. The ultimate responsibility for the accuracy of the Contractor's bid remains with the Contractor. Furthermore, the Department will not be held responsible for the loss of or damage to any Computer Disk after the Contractor takes possession of it or it is mailed to the Contractor. If any Computer Disk is lost or damaged, the Contractor may purchase another Computer Disk.

CONDITIONAL AWARD. The term “Conditional Award” means an Award, conditioned upon the later grant of approval by the Federal Government or such other State, governmental body, private party, or combination thereof.

Where compliance with a Federal requirement or a requirement imposed as the result of the Project being a cooperative endeavor involving one or more states, governmental bodies, private parties, or a combination thereof, makes it not reasonably possible to award the Contract within the 30 Working Day period fixed by NJSA 27:7-33, the Department may, nevertheless, make a Conditional Award.

CONSTRUCTION ENGINEERING COSTS. The costs incurred by the Department for engineering, inspection, and administration of a Project during construction.

CONSTRUCTION OPERATIONS. Construction operations shall include actual construction of the project required by the Contract. The term shall not include mobilization, procurement and storage of materials and plants, providing engineering, Performance Bond and Payment Bond, surveys, working drawings, field offices, or other schedules, certificates, forms, or documents necessary before the performance of Work on Pay Items.

CONSTRUCTION ORDER. The term "Construction Order" includes Field Orders, Change Orders, and Supplementary Agreements.

CONTRACT. The term "Contract" means the entire and integrated agreement between the parties thereunder and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents form the Contract between the Department and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work and the basis of payment.

CONTRACT DOCUMENTS. The term "Contract Documents" includes: Advertisement for Proposal, Proposal, Certification as to Publication and Notice of Advertisement for Proposal, Appointment of Agent by Nonresident Contractors, Noncollusion Affidavit, Warranty Concerning Solicitation of the Contract by Others, Resolution of Award of Contract, Executed Form of Contract, Performance Bond and Payment Bond, Project Specifications (herein including Supplemental Specifications and Special Provision) Plans, , Addenda, or other information mailed or otherwise transmitted to the prospective bidders before the receipt of bids, Change Orders, Field Orders, and Supplementary Agreements, all of which are to be treated as one instrument whether or not set forth at length in the form of Contract.

As used in Sections 102 and 103 only, Contract Documents do not include Change Orders, Field Orders, and Supplementary Agreements. As used in Section 102 only, Contract Documents also do not include Resolution of Award of Contract, Executed Form of Contract, and Performance and Payment Bonds.

CONTRACT TIME. The term "Contract Time" means the number of Working Days or Calendar Days including authorized adjustments allowed for Completion. When a specified completion date is shown in the Specifications instead of the number of Working Days or Calendar Days, Completion shall be on or before that date. Specified completion date and Calendar Day contracts shall be completed on or before the day indicated even when that date is a Saturday, Sunday, or holiday.

CONTRACTOR. The term "Contractor" means the individual, firm, partnership, corporation, or any acceptable combination thereof contracting with the Department for performance of the prescribed Work. Throughout the Contract Documents, the Contractor is referred to as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

CONTRACTOR'S LAND SURVEYOR. A person who is legally authorized to practice land surveying in New Jersey according to the provisions of P.L. 1938 c. 342 (C 45:8-27 et seq.), who is in principal charge of all surveying work and setting, moving, or resetting of monuments. He or she may be either an employee of the Contractor or under a subcontract with the Contractor to provide such land surveying services.

CURRENT CONTROLLING OPERATION OR OPERATIONS. The current controlling operation or operations is to be construed to include any feature of the Work, which, if delayed at the time in question, delays the overall time of Completion.

DAYS. Unless otherwise designated, days as used in the Contract Documents means Calendar Days.

DEPARTMENT. The term "Department" means the Department of Transportation of the State of New Jersey, as created by law.

DEPARTMENT CLAIMS COMMITTEE. A contractual body available to review and resolve claims that arise under the Contract. The Committee consists of three voting members with the Director of Design Services as the chairperson, one member is the Department's Chief Financial Office, and one member is selected from the other directors within Capital Program Management. Additional non-voting members are a Deputy Attorney General, the Secretary of the Department Claims Committee.

DEPARTMENT LABORATORY. The term "Department Laboratory" means the main testing laboratory of the Department at 930 Lower Ferry Road, P.O. Box 607 Trenton, New Jersey 08625, or such other laboratory as the Department may designate.

DESIGN UNIT. The term "Design Unit" for any particular project means the Department's consultant engineering firm or the in-house design unit that prepared the Contract Plans for that project.

DISPUTE (AS TO A CLAIM). A disagreement between the Department and the Contractor with regard to the Work or Contract Documents arising out of a claim by the Contractor for additional compensation or an extension of time.

EASEMENT. The right to use the land of others for a specific or particular purpose consistent with the grant under which it was made.

ENGINEER. The term “Engineer” means the State Transportation Engineer, as created by law, acting directly or through the Engineer’s duly authorized representatives, such representatives acting within the scope of the particular duties delegated to them.

To avoid repetition, whenever the following words are used, it shall be understood as if they were followed by the words “to the Engineer” or “by the Engineer”: “acceptable, accepted, added, allowed, applied, approved, assumed, authorized, awarded, calculated, charged, checked, classified, computed, condemned, conducted, considered, considered necessary, contemplated, converted, deducted, deemed, deemed necessary, deleted, designated, determined, directed, disapproved, divided, documented, established, evaluated, examined, excluded, furnished, given, granted, included, incorporated, increased, indicated, inspected, insufficient, issued, made, marked, measured, modified, monitored, notified, observed, obtained, opened, ordered, paid, paid for, performed, permitted, provided, received, recorded, reduced, re-evaluated, rejected, removed, required, reserved, retested, returned, sampled, satisfactory, scheduled, specified, stopped, submitted, sufficient, suitable, supplied, suspended, taken, tested, unacceptable, unsatisfactory, unsuitable, or used.”

EQUIPMENT. All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction of the Work.

EXECUTIVE DIRECTOR OF REGIONAL OPERATIONS. The term “Executive Director of Regional Operations” means the Executive Director of Regional Operations whose region is in charge of administering the Contract.

EXTRA WORK. The term “Extra Work” means new and unforeseen work found essential to the satisfactory completion of the Project, as determined by the Engineer, and not covered by any of the various Pay Items for which there is a bid price or by combination of such items. In the event portions of such work are determined by the Engineer to be covered by one of the various Pay Items for which there is a bid price or combinations of such items, the remaining portion of such work will be designated as Extra Work. Extra Work also includes work specifically designated as Extra Work in the Contract Documents.

EXTREME WEATHER CONDITIONS. When, solely as a result of adverse weather, the Contractor is not able to work, the Contractor is entitled to claim that progress of the Work has been affected by extreme weather conditions and may seek an extension of Contract Time consistent with the provisions of Subsection 108.11.

FIELD ORDER. The term “Field Order” means a written order, signed by the Resident Engineer, requiring performance by the Contractor without negotiation of any sort.

FINAL CERTIFICATE. It is the final payment document that sets forth the total amount payable to the Contractor, including therein an itemization of said amount segregated as to Pay Item quantities, Extra Work, and any other basis for payment; it also includes therein any retainage to be released and all deductions made or to be made from prior payments as required pursuant to the provisions of the Contract Documents, which may result in either a Final Payment to the Contractor or a Credit (payment) due the Department.

HOLIDAYS. The following days shall be considered holidays for use in determination of Working Days:

New Year’s Day	Labor Day
Martin Luther King’s Birthday	Columbus Day
Lincoln’s Birthday	Presidential Election Day
Washington’s Birthday (Presidents’ Day)	Veteran’s Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

INSPECTOR. The Engineer’s authorized representative assigned to inspect contract performance, methods, and materials related to the Work both on and off the site of the Project.

INVITATION FOR BIDS. The Advertisement of Proposals for all work or materials on which bids are required. Such advertisement indicates the location of the Project and an estimated quantity of Work to be done or the character and quantity of the material to be furnished and the time and place of the opening of Proposals.

ITS OWN ORGANIZATION. The term “Its Own Organization” shall be construed to include only workers customarily employed and paid directly by the Contractor and equipment owned or rented by the Contractor, with or without operators.

MAJOR AND MINOR PAY ITEMS. The term “Major Pay Item” means any Pay Item having an original Contract value in excess of ten percent of the Total Contract Price and those items specifically designated as “Major Pay Items” in [Subsection 104.05](#). The original Contract value of a Pay Item equals the per unit price bid for said Pay Item multiplied by the estimated quantity of such item contained in the Proposal Form. All other Pay Items shall be considered “Minor Pay Items.”

MATERIALS. Any substances specified for use in the construction of the Project.

MATERIALS QUESTIONNAIRE. The specified forms on which the Contractor shall notify the Engineer of the sources of materials expected to be used.

NON-BINDING MEDIATION. The fourth and final step in the Department’s Contractual Claim Resolution Process for claims arising under the Contract utilizing a non-binding mediation forum wherein an independent mediator is engaged in an attempt to resolve a claim presented by a Contractor.

NOTICE TO PROCEED. The term “Notice to Proceed” means the written notice to the Contractor to begin Work.

PAY ITEM. The term “Pay Item” means a specifically described item of Work for which the bidder provides a per unit or lump sum price in the Proposal.

PERFORMANCE BOND AND PAYMENT BOND. The term “Performance Bond and Payment Bond” means the approved form of security, executed by the Contractor and its surety or sureties, guaranteeing complete performance of the Contract in conformity with the Contract Documents and the payment of all legal debts pertaining to the construction of the Project.

PILOT STUDY AREA. The area of environmental dredging of targeted sediment as specified in the plans.

PLANS. The approved plans, profiles, typical sections, cross-sections, working drawings, and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions, quantities, and details of the Work to be done.

PRECONSTRUCTION CONFERENCE. The initial Project meeting conducted by the Engineer, normally held after Award of the Contract and before the start of Work. The Contractor shall attend preconstruction conferences.

PRESIDING OFFICER. The Engineer or the Engineer’s designee in charge of receipt of bids. The Presiding Officer opens each meeting for the receipt of bids and declares when the receipt of bids has been closed.

PROFILE. The trace of a vertical plane intersecting the top surface of the proposed final grade.

PROJECT. The specific section of waterway or other public improvement together with all appurtenances and construction to be performed thereon, under the Contract. The Project may include work by others under other contracts.

PROPOSAL BOND. The term “Proposal Bond” means the security furnished with a bid to guarantee that the bidder shall enter into the Contract if awarded the Contract.

REGIONAL DISPUTE BOARD. A three-member Board, comprised of one member from the Division of Project Management, one member from the Bureau of Construction Engineering, and the Regional Construction Engineer (Chairperson), that is available under the terms of the Contract to review Disputes which have not been resolved by the Resident Engineer.

RESIDENT ENGINEER. The term “Resident Engineer” means the field representative of the Engineer having direct supervision of the administration of the Contract.

RIGHT-OF-WAY (ROW). A general term denoting all of the land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes or construction of a public improvement.

SECRETARY, DEPARTMENT CLAIMS COMMITTEE. The individual employed by the Department who gathers information and provides administrative assistance to the members of the Department Claims Committee. This individual is the conduit between the Department Claims Committee members and the Contractor. Contact by the Contractor regarding any issue involving the Claims Committee or Mediation shall be through the Secretary.

SHALL. Designates an obligation of the Contractor, unless otherwise indicated.

SPECIALTY ITEMS. Such items shall be limited to work that requires highly specialized knowledge, craftsmanship, or equipment not normally available among contractors qualified to bid on the Contract as a whole, and that are designated as “Specialty Items” in the Contract Documents.

SPECIFICATIONS. The compilation of provisions and requirements for the performance of prescribed work contained in the Project Specifications (the Project Specifications include the Standard Specifications, as supplemented by the Supplemental Specifications and Special Provisions), and modified by Addenda or other information giving interpretations or revisions to them which, before the receipt of bids, are transmitted to prospective Bidders.

1. *Standard Specifications.* The term “Standard Specifications” means the 2001 Standard Specifications for Road and Bridge Construction of the New Jersey Department of Transportation, which has been approved for general application and repetitive use. The Standard Specifications have been modified for the purpose of the Passaic River Dredging Pilot.
2. *Supplemental Specifications.* Approved additions and revisions to the Standard Specifications.
3. *Special Provisions.* Revisions to the Standard and Supplemental Specifications applicable to an individual project.

STATE. The “State” means the State of New Jersey.

STATE BUSINESS DAY. A Calendar Day, exclusive of Saturdays, Sundays, State-recognized legal holidays, and such other holidays or State office closings as declared by the Governor. The term “State Business Day” as used in the Contract Documents and the term “Working Day” as used in NJSA 27:7-31 and NJSA 27:7-33 are synonymous.

STRUCTURES. Bridges, culverts, inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other features which may be encountered in the Work and not otherwise classed herein.

SUBCONTRACTOR. An individual, firm, partnership, corporation, or any acceptable combination thereof, to which the Contractor subcontracts part of the Work pursuant to [Subsection 108.02](#).

SUBSTANTIAL COMPLETION. The term “Substantial Completion” means the point at which the performance of all Work on the Project has been completed except final cleanup and repair of unacceptable Work, and provided the Engineer has solely determined that:

1. the Project is safe and convenient for use by the public, and
2. failure to complete the Work and repairs excepted above does not result in the deterioration of other completed Work; and provided further that the value of repairs and cleanup is less than two percent of the Total Adjusted Contract Price. The Contractor’s authorized representative responsible for and in charge of the Work. The Superintendent shall be authorized to receive all communications from the State.

SUPPLEMENTARY AGREEMENT. The term “Supplementary Agreement” means a bilateral agreement between the Commissioner and the Contractor, executed on a Change Order form, setting forth the negotiated terms and conditions whereunder changes are to be accomplished, including negotiated adjustments in compensation and time of Completion. The Supplementary Agreement shall be conclusive as to all questions of compensation and extensions of Contract Time relative to the subject of the agreement excepting only those instances wherein the agreement recites specific exceptions.

SURETY. The corporate body bound with and for the Contractor for the full and complete performance of the Contract and for the payment of all debts and obligations pertaining to the Work.

TESTING AGENCY. A privately owned facility capable of testing and evaluating component parts, or the whole, for certification of the composition or construction of the material or product.

TOTAL ADJUSTED CONTRACT PRICE. The term “Total Adjusted Contract Price” means the Total Contract Price as it is adjusted through the issuance of Change Orders and Field Orders and the calculation of as-built quantities.

TOTAL CONTRACT PRICE. The term “Total Contract Price” means the correctly determined summation of lump sum bids and products of all quantities for Pay Items shown in the Proposal multiplied by the unit prices bid.

TOWN, TOWNSHIP, CITY. A subdivision of the County used to designate or identify the location of the Project.

UNBALANCED BID. The term “Unbalanced Bid” means a materially unbalanced bid where there is a reasonable doubt that award to the Bidder submitting a mathematically unbalanced bid, which is structured on the basis of nominal prices for some work and inflated prices for other work, will result in the lowest ultimate cost to the Department.

UTILITY. A publicly, privately, or cooperatively owned agency or agencies operated by one or more persons or corporations for public service. For purposes of the Contract, railroads shall be considered utilities.

WILL. Designates an action to be taken by the State, the Department, the Commissioner, the Engineer, or any authorized representative, unless otherwise indicated.

WORK. The term “Work” means the furnishing of all labor, services, materials, equipment, tools, transportation, supplies, and other incidentals necessary or convenient for the successful completion by the Contractor of the construction described in the Contract Documents and the carrying out of all duties and obligations imposed by the Contract Documents on the Contractor.

WORKING DAY. Any Calendar Day, exclusive of:

1. Saturdays, Sundays, and holidays;
2. Days on which the Contractor is specifically required by the Contract Documents to suspend construction operations; and
3. Days on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to the current controlling operation or operations, as determined by the Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on such operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations.

Should the Contractor prepare to begin work at the regular starting time in the morning of any day on which inclement weather, or the conditions resulting from the weather, prevent the work from beginning at the usual starting time, and the crew is dismissed as a result thereof, and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operations or operations, the Contractor will not be charged for a Working Day whether or not conditions should change thereafter during said day and the major portion of the day could be considered to be suitable for such construction operations.

WORKING DRAWINGS. Shop drawings, diagrams, illustrations, schedules, performance charts, brochures, and any other supplementary plans or similar data which are prepared by the Contractor or any subcontractor, manufacturer, supplier, or distributor, and which the Contractor is required to submit to the Engineer for approval or certification.

101.04 Inquiries Regarding the Project.

Inquiries before the receipt of bids regarding any discrepancy, error, or omission, or concerning the intent or meaning of the Plans, Specifications, or other Contract Documents shall be directed to the Department as provided herein.

Contractors shall rely only upon written responses to their inquiries. Oral responses will be of no effect.

Inquiries regarding the various types of work of this Contract shall be directed to the following representatives of the Department having offices at 1035 Parkway Avenue Trenton, New Jersey 08625-0837, or such other individuals as may hereafter be designated:

All inquiries shall be directed to the Engineer at P.O. Box 837, Trenton, New Jersey 08625.

Telephone: 609-530-4779 (Lisa Baron)
Fax: 609-530-4860

All inquiries shall include the following:

- a. Name of the company;
- b. Telephone number, fax number, and contact person; and
- c. Specifics of the inquiry, including anticipated impacts.

The Department will investigate the information provided in the inquiry and then respond through an addendum only if determined to be necessary.

SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS

102.01 Prequalification of Prospective Bidders.

Bids will be received only from Bidders who, before the delivery of the bid, have been prequalified according to Regulations Covering the Classification of Prospective Bidders issued according to N.J.S.A. 27:7-35.1 *et seq.* and who at the time of delivery of bid have effective prequalification ratings of not less than the amounts of their respective bids.

Additionally, for wholly State-funded contracts, bidders must be registered with the New Jersey Department of Labor, Division of Wage and Hour Compliance, at the time of bid pursuant to the "Public Works Contractor Registration Act," N.J.S.A. 34:11-56.48 *et seq.* (P.L. 2003, c. 91).

102.02 Disqualification of Prequalified Prospective Bidders.

The Department reserves the right to disqualify or refuse to receive a bid from a prospective Bidder even though prequalified as required by [Subsection 102.01](#) for any of the following reasons:

1. Lack of competency or lack of adequate machinery, plant, or other equipment.
2. Uncompleted work that, in the judgment of the Department, might hinder or prevent the prompt completion of additional work, if awarded.
3. Failure to pay, or satisfactorily settle, all bills due for labor, equipment, or material on previous Contracts.
4. Failure to comply with any prequalification regulations of the Department.
5. Default under any previous contract.
6. Unsatisfactory performance on previous or current contracts.
7. Questionable moral integrity as determined by the Attorney General of New Jersey or the Commissioner.
8. Failure to reimburse the State for monies owed on any previously awarded contracts including those where the prospective Bidder is a party to a joint venture and the joint venture has failed to reimburse the State for monies owed.
9. Documented failure to comply with the conditions of permits
10. For wholly State-funded contracts, failure to have valid, current registration with the New Jersey Department of Labor, Division of Wage and Hour Compliance according to [N.J.S.A. 34:11-56.48 et seq.](#), at the time of bid.

102.03 Bidder Registration and Downloading of the Bid Documents; Contents of the Bid.

This project is being bid by use of an electronic bidding process. Electronic bidding information is available on Bid Express at www.bidx.com. Registration and a subscription fee are required to access the bid documents and plans. Once the bidder has registered, log on using the log on ID and password provided to you by Bid Express. Select New Jersey by either clicking "NJ" on the map or using the drop down list. The bidder must then download the Expedite bidding software. When installing the bid program the Bidder enters their Vendor code assigned by NJDOT. Before running the electronic bidding program, the Bidder shall read the on-line help documentation for the Expedite Software.

All bid documents with the exception of the Power of Attorney for the Proposal Bond and the Technical Proposal shall be downloaded from the NJDOT Bid Express web site. A bid shall consist of the downloaded and properly completed price proposal form, proposal bond, and financial statement, technical proposal and the Power of Attorney for the Proposal Bond all of which shall be submitted to the Department on or before the time for the opening of bids.

The Price Proposal Form states the location and description of the Project, shows the approximate estimate of the various quantities and kinds of Work to be performed, and includes a schedule of Pay Items for which bid prices are invited. The Price Proposal Form and accompanying Project Specifications state the number of days or date in which the Project must be completed, the amount of the Proposal Bond, and the date, time, and place of the opening of Bids. The financial statement provides current information regarding the bidder's financial condition. The Proposal Bond guarantees execution of the contract by the bidder receiving the award. The Technical Proposal describes the contractors approach to the project. Other Contract Documents are considered part of the proposal whether attached or not.

The bidder is required to submit both a paper bid as well as an electronic copy which shall be on diskette or CD-ROM. No alteration to that software is permitted. The paper bid submitted to the Department will be reviewed and evaluated by the Department and serve as the basis for the award and subsequent contract. In case of discrepancies between the paper bid and the electronic copy, the paper bid shall govern.

If you experience any problems with the web site, downloading documents or the Expedite software contact:

Joseph Weber
NJDOT
TRNS*PORT Project Manager
609-530-2469

102.04 Interpretation of Quantities in Price Proposal Form.

The quantities appearing in the Price Proposal Form are approximate only and are prepared for the comparison of bids. Payment will be made only for the quantities of Work completed according to the Contract. Such payment will be made at the original unit prices for the quantities of Work accepted by the Engineer. The scheduled quantities of Work may be increased or decreased, or Pay Items may be eliminated in their entirety as hereinafter provided.

102.05 “If and Where Directed” Items.

The Price Proposal Form may request bids on one or more Pay Items to be incorporated into the Project “if and where directed” by the Engineer. Such items may not be located on the Plans. The estimated quantities set out in the Price Proposal Form for such items are presented solely for the purpose of obtaining a representative bid price, but are not intended to indicate the Department’s anticipation as to the quantities of such items which are to be actually incorporated into the Project. Depending on field conditions, such “if and where directed” items may or may not be incorporated into the Project and if incorporated may be many times the estimated quantity or only a fraction thereof.

Incorporation of such items shall only be made on written directions of the Engineer. In the absence of written directions, no such items shall be incorporated into the Project and if incorporated will not be paid for. The Engineer may order incorporation of such items at any location within the Project and at any time during the Contract Time. Claims for additional compensation shall not be made because of any increase, decrease, or elimination of such items, nor because of an increase or decrease in the amount of Work due to the field conditions encountered in incorporating such items into the Project.

102.06 Examination of Contract Documents and Site of Project.

The Bidder shall examine carefully the site of the proposed Project, the Contract Documents, and other information before submitting a Bid. The Contract Documents are not to be construed as an averred representation or warranty of the existing conditions. In the event the Bidder’s examination reveals that the site conditions are inconsistent with the Contract Documents or there are discrepancies, errors, omissions or patent ambiguities within the Contract Documents, the Bidder shall immediately notify the Department as provided in Subsection 101.04. Bidders shall make such independent investigation and examination as necessary to satisfy the Bidder as to the conditions to be encountered in the performance of the Work and the type of equipment and operations required to perform the Work. The Bidder shall investigate, with respect to possible local material sources, the quality and quantity of material available and the type and extent of processing that may be required to produce material conforming to the requirements of the Contract Documents. The submission of a Bid shall be considered prima facie evidence that the Bidder has made such independent investigation and examination, including the information provided below, and is fully aware of the requirements of the Contract Documents, including all restrictions. Further, the Bidder warrants that the proposed contract prices in the Bid include all costs to complete the Work.

The Bidders must provide written notice to the Engineer, at least 24 hours in advance of any investigation at the site, and insure any staff at the site have two forms of identification and the site authorization form received with the purchase of the Contract Documents.

What is specified below is not a part of the Contract and is made available for information only. The Department makes no representation, warranty or guarantee, expressed or implied, by making available such information. It is also the Bidder’s responsibility to access such information.

1. Investigation of Pilot Study Area Conditions.

The records of the Department’s investigation of the pilot study area, including, but not limited to, side scan sonar, sub-bottom profile, magnetometry and gradiometry surveys, sediment coring data for chemistry and geotechnical parameters, hydrodynamic surveys and predictive hydrodynamic modeling may be inspected on www.ourpassaic.org (project activities/dredging and Decontamination Technologies). This investigation, while considered by the Department to be sufficient for design purposes, may not be a sufficient substitute for the Bidder’s own investigation, interpretation, or judgment in preparing a Bid for construction purposes. The Bidder shall not rely on any estimates and quantities included in these investigations. The conditions indicated by such investigations or records thereof may not be representative of those existing throughout such areas, or that materials other than, or in proportions different from those indicated, may be encountered.

The Bidder is charged with knowledge of the Pilot Study Area, and in performing its site investigation shall be fully aware of the following:

- a. Lower Passaic River Dredging Pilot Study Data Summary and Evaluation Report (EarthTech/MPI, 2005) available on www.ourpassaic.org.
- b. Presentation on Hydrodynamic Plume Modeling, Water Quality Monitoring and Dredging Design, available on www.ourpassaic.org.
- c. Draft Passaic River Environmental Dredging Pilot Study- Hydrodynamic Modeling (EarthTech, May 2005) available on www.ourpassaic.org
- d. Draft Project Plans for Environmental Dredging Pilot Study (EarthTech/MPI, June 2005) available on www.ourpassaic.org.

2. Permits.

A Federal Consistency Determination/Water Quality Certification will be issued by the New Jersey Department of Environmental Protection as per Section 307 of the federal Coastal Zone Management Act (16 USC 1451 et seq.) and Section 401 of the federal Clean Water Act (33 USC 1251 et seq.). The Department, USACE and USEPA will submit the request as part of the Lower Passaic River Restoration Feasibility Study in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, Superfund). No permit is required from the Army Corps of Engineers since the work is being conducted under the authority of CERCLA.

102.07 Preparation of the Price and Technical Proposal.

Price Proposal

The Bidder shall submit a Price Proposal produced from the Expedite software that was downloaded from the NJDOT Bid Express web site. The Price Proposal shall include all addenda which shall also be downloaded from that web site. The Bidder shall specify a price in figures for each Pay Item. For lump sum items, the price should appear solely in the box provided for the lump sum item under the column designated as "Amounts." For unit price items the per unit price shall appear under the column designated "Unit Price" in the appropriate box, and the product of the respective unit price and the approximate quantity for that item shall appear under the column designated "Amounts." The Total Contract Price is the sum of all figures shown in the column designated "Amounts" and shall appear at the location provided therefore. When the Bidder intends to bid zero (\$0.00) for a Pay Item, a "0" should appear in the "Unit Price" and "Amounts" columns for unit price items or in the "Amounts" column for lump sum items.

When the Proposal contains alternate items, the Bidder shall only provide the unit price and amount for the lowest priced alternate item. When alternate items in the proposal have a lump sum pay quantity, the Bidder shall only provide the amount for the lowest priced alternate item. The alternate item for which a price has been provided shall be constructed. When the proposal contains alternate groups of items, the Bidder shall only provide the unit price and amount for each item within the lowest priced alternate group. The alternate group of items for which a price has been provided shall be constructed.

The only entries permitted in the price proposal produced using the Expedite software will be the unit or lump sum prices for items that must be bid. The Expedite software will perform all extensions of the unit or lump sum prices, calculate the total bid amounts, and print a completed Price Proposal Form.

The Price Proposal Form printed from the Expedite software shall be printed on 8 ½" x 11" white papers and shall include all revisions to the price proposal included in the latest addendum issued by the Department. Bids will be accepted only if submitted on the Price Proposal Form generated and printed from Expedite software.

The Bidder shall check its bid prior to submission using the Expedite software. The Bidder shall select "tools" and then select "check bid" and assure there are no errors prior to printing the electronic bid. After final printing, the Bidder may make changes to the bid by indicating the changes in ink and initialing prior to submitting the bid. Once the Bidder has completed the bid and made all desired changes, the paper bid with original signatures and an electronic copy on a diskette or CD-ROM shall be submitted to the Department. In the event of a discrepancy between the electronic copy and the paper bid, the paper bid will govern. The electronic copy on diskette or CD Rom shall be submitted in a separate envelope from the paper bid. The envelopes containing the paper bid and electronic copy shall each include the bidder's name and the DP number of the electronic bid submitted.

The paper bid must be signed in ink by the Bidder. If the Bidder is an individual, the Bidder's name and post office address must be shown; by a partnership, the name and post office address of each partnership member must be shown; as a joint venture, the name and post office address of each member or officer of the firms represented by the joint venture must be shown; by a corporation, the name of the corporation and the business address of its corporate offices must be shown. For bids submitted by Joint Ventures the bidder shall select "tools" from the Expedite menu and mark the electronic bid as "Joint Bid."

Technical Proposal

The Bidder shall prepare and submit a Technical Proposal that includes the following information:

1. The name, title, business address, phone number and email address of the senior official responsible for representing the Contractor in the contractual matters of the project.
2. An organizational chart listing all personnel by name, who will be engaged on the project and their specific function, responsibility and authority in addition to resumes of those personnel.
3. The name, address, phone number and email address of all subcontractors that will be employed on the project, as well as the specific project function to be accomplished by each subcontractor and the experience of each subcontractor related to that function.
4. An equipment list and photographs of the major dredging equipment proposed for use including dredging machines, tow boats and scows, and the operating draft of each. For dredging machines not integral to the floating platform, a description and photographs of the floating platform and its loaded draft requirements shall be included.
5. A detailed description of the dredging machine including its geometry, capacity, bite profile, expected productivity, positioning system, design features related to controlling sediment resuspension, design features related to controlling dredging operations, design features related to minimizing over dredging while removing all targeted materials, and capability to accommodate sampling activities during dredging operations.
6. A description of the work procedure to be followed and the proposed dredging activities.
7. Recommendations for alternative dredging strategies.
8. The equipment to be used to reposition the dredge, as well as the positioning accuracy of the equipment.
9. Information regarding flexibility of dredging operations to proceed in a modified sequence or at a modified productivity rate for the purpose of optimizing environmental data collection by the Department.
10. For each tow boat or tug, a listing of its USCG designation, engine rating (in horsepower), and a description of any design features or operating procedures that may reduce sediment resuspension when the vessel transits the work area.
11. For each scow, a listing of its volumetric capacity and the Contractor's proposed method to estimate the volume of in-situ sediment of each shipment.
12. The approach for conducting the work including mobilization, debris removal and dredging and barging operations.

102.08 Balanced Bids.

Each Pay Item should reflect the actual cost, which the Bidder anticipates incurring for the performance of that particular item, together with a proportional share of the Bidder's anticipated profit, overhead, and costs to perform work for which no Pay Item is provided. In no event will the Department consider any claim for additional compensation arising from the bid on an item, or group of items, inaccurately reflecting a disproportionate share of the Bidder's anticipated profit, overhead, and other costs.

102.09 Delivery of Bids.

Each bid should be delivered in 2 envelopes one containing the paper bid and related documents the other electronic copy on either a diskette or CD ROM Each envelope shall clearly indicate its contents. The bid shall be mailed or hand carried to the Department at the address and in care of the official in whose office the bids are to be received. Bids must be received before or at the time and at the place specified in the Advertisement. Bids will not be accepted after the receipt of bids has been declared closed by the Presiding Officer.

When the Bidder submits bids for two or more Projects, a single updated financial questionnaire, submitted in a separate envelope, is acceptable instead of a separate questionnaire for each Project.

102.10 Proposal Bond.

The bid, when submitted, shall be accompanied by a Proposal Bond satisfactory to the Commissioner, on the form furnished by the Department, for a sum of not less than 50 percent of the Total Contract Price.

The Proposal Bond shall be properly filled out, signed, and witnessed, and shall be furnished only by such surety company or companies authorized to do business in this State as are listed in the current US Treasury Department Circular 570 as of the date for receipt of bids for the particular Project.

The Proposal Bond shall be accompanied by a copy of the power of attorney executed by the surety company or companies. The power of attorney shall set forth the authority of the attorney-in-fact who has signed the bond on behalf

of the surety company to bind the company and shall further certify that such power is in full force and effect as of the date of the bond.

102.11 Withdrawal of Bids.

A Bidder may withdraw a Bid after it has been submitted to the Department, provided the request for such withdrawal is received by the Department, in writing or by fax before the time set for opening bids.

Bids shall not be withdrawn after the time designated for the public opening of such bids, except that when Bids for more than one project are to be opened at the same time, a Bidder, at its option, may submit a written request to withdraw its Bid for the second or succeeding project. The Bidder shall notify the Department, in writing, of its intent to exercise this option before the time set for opening of Bids. In such event, a short interval of time will be allowed between project Bid openings to allow the Bidder time to submit an executed Department of Transportation "Request for Withdrawal of Bid" form. Upon presentation of the executed form at the proper time, a Bidder's Bid will be returned unopened.

102.12 This Subsection is intentionally left blank.

102.13 Acknowledgment of Revisions.

When Addenda and other forms of notice giving revisions and interpretations of the Contract Documents are posted on the NJDOT Bid Express web site, acknowledgment thereof must be made by the Bidder. The acknowledgment shall be sent or hand delivered to the office and/or individual noted on the form and must be received before the Bid is opened. If the acknowledgment has not been received before the opening of bids, the bid envelope will be returned to the Bidder unopened. It is the obligation of the bidder to check the New Jersey Bid Express home page for addenda. The Department will not send addenda to individual prospective bidders, but will only post addenda on the New Jersey Bid Express home page. No addenda shall be posted less than 24 hours before the time set for the receipt of bids, with the exception of addenda postponing the bid opening date and time.

102.14 Public Opening of Bids.

Bids will be opened and read publicly at the time and place indicated in the Advertisement or such other time and place as may be established by Addendum. Bidders, their authorized agents, and other interested parties are invited to be present.

102.15 Irregular Bids.

Bids will be considered irregular and will be rejected by the Department if they are determined to contain a material defect.

102.16 Disqualification of Bidders.

The Department will disqualify a bidder and reject a bid submitted by that bidder if the bidder is determined by the Department to lack responsibility. Factors demonstrating a lack of responsibility shall include but not be limited to:

1. Evidence of collusion among bidders.
2. Uncompleted work, which in the opinion of the Department, might hinder or prevent completion of additional work if awarded.
3. The bid is materially unbalanced.

102.17 Rejection of All Bids

The Department may reject all bids when the Commissioner determines it is advisable to do so in the interest of the State or public.

SECTION 103 - AWARD AND EXECUTION OF CONTRACT

103.01 Consideration of Bids.

Bids will be evaluated and the contract awarded to the responsible bidder whose bid, conforming to the invitation for bids, is determined to be most advantageous to the Department upon consideration of price and other factors in accordance with N.J.S.A. 27:1A-83.

Price Proposal

After the Bids are opened and read, they are compared on the basis of the correctly determined summation of the correctly determined products of all the quantities for Pay Items shown in the Price Proposal multiplied by the unit prices bid together with the sums bid for lump sum Pay Items. The Total Contract Price resulting from such comparisons is available to the public upon request.

In the event of a discrepancy between the unit price bid for any Pay Item and the extension shown for that item under the column of the Price Proposal Form designated "Amount," the unit price is to govern. Where a unit price is bid for a Pay Item, but no extension is provided, the Department will provide the extension based on the unit price bid and the estimated quantity for that Pay Item. Where an extension is provided by the Bidder in the "Amount" column, but no unit price appears in the "Unit Price" column of the Price Proposal Form, the Department will provide the unit price by dividing the "Amount" figure provided by the Bidder by the estimated quantity.

Where no figure is provided by the Bidder in both the "Unit Price" and "Amount" columns for one or more Pay Items, or where no figure is provided in the "Amount" column for one or more lump sum Pay Items, the Department will consider the amount bid to be zero (\$0.00) for that item provided, however, that the Commissioner may reject such a bid if this result be unconscionable and it is shown that the failure to include a bid price was an excusable mistake.

In the event a corporation not incorporated in the State is the lowest Bidder, it shall be authorized to do business in the State pursuant to NJSA 14A:15-2 *et seq.*

The Commissioner may reject any or all Bids when the Commissioner determines that it is in the public interest to do so. The Commissioner reserves the right to waive technicalities or to advertise for new Bids.

Technical Proposals

The Technical Proposals will be opened and evaluated by the Department based on the following factors:

1. The Bidder's experience with similar projects.
2. The Bidder's proposed on-site and headquarters staff's experience on similar projects.
3. The suitability of the proposed dredge and its design features for completion of the Work.
4. The suitability of other proposed equipment, including the dredge floating platform, tow boats and scows for completion of the Work.
5. The Bidder's approach for conducting the Work.

Items 1 and 2 shall be worth 10 points each; items 3 and 4 shall be worth 20 points each; and item 5 shall be worth 40 points. The maximum score for a Technical Proposal shall be 100 points.

If, upon completion of an initial review of the Bidders' Technical Proposals, the Department determines that additional information is needed to complete the review, the Department will submit a written and electronic request to Bidders for additional information. The request for additional information will specify details of the submission requirements and schedule implications associated with the request for additional information.

103.02 Award of Contract.

The Award will be made to the responsible Bidder whose bid conforms in all respects to the requirements set forth in the contract documents, and which is determined by the Department to be in the best interest of the Department, price and other factors considered. The successful Bidder shall also provide to the Department, within the same ten State Business Day period, proof of a valid business registration with the Division of Revenue in the New Jersey Department of Treasury. The Contract will not be entered into by the Department unless the Bidder first provides proof of a valid business registration in compliance with P. L. 2001, c.134 (N.J.S. 52:32-44). The Commissioner will award the Contract or reject all bids within 30 State business days after the bids are received.

The Commissioner may make a Conditional Award pending the approval of the Federal Government, another State governmental body, or private party. Should the Contract not be awarded or conditionally awarded within 30 State business days, all Bidders shall have the right to withdraw their bids. However, the Commissioner and the lowest

responsible Bidder and/or the second lowest responsible Bidder can agree to extend the time within which the Commissioner may make an award or conditional award by mutual consent.

At the time of Award or Conditional Award to a Bidder not a resident of the State, such Bidder shall appoint, on the form furnished by the Department, a proper agent in the State on whom service can be made in event of litigation of any type arising under the Contractor or as a result of performance of the Contract. Said agency shall remain in effect during the performance of the Contract and for six years following Acceptance.

The Award or Conditional Award is not binding upon the State until the Contract has been executed by the Commissioner, nor shall any work be performed on account of the proposed Contract until the prospective Contractor has been notified that the Contract has been executed by the Commissioner, and then only as provided in [Subsection 108.03](#).

103.03 Cancellation of Award.

The Department reserves the right to cancel an Award or Conditional Award at any time before the execution of said Contract by all parties without any liability against the Department.

103.04 Return of Proposal Bond.

All Proposal Bonds except those of the two lowest Bidders will be returned within three State business days after receipt of bids.

The Proposal Bond of the lowest and next lowest Bidders will be returned when the Contract and Performance Bond and Payment Bond have been executed and delivered according to the provisions of [Subsection 103.06](#), or, if not executed, when other disposition of the matter has been made by the Commissioner. However, when the Award or Conditional Award has been annulled due to failure of the Bidder to whom award was made to execute and deliver the Contract and Performance Bond and Payment Bond, the Proposal Bond of such Bidder shall become operative as provided in [Subsection 103.07](#).

103.05 Performance Bond and Payment Bond.

Within ten State business days of the date of Award or Conditional Award, the Bidder to whom the Contract has been awarded shall complete and deliver a Performance Bond and a Payment Bond on forms furnished by the Department.

Each bond shall be the sum of not less than the Total Contract Price less the lump sum bid for the Pay Item "Performance Bond and Payment Bond" and shall be maintained by the Contractor until Acceptance. In the event of the insolvency of the surety or if the Performance Bond and Payment Bond have not been properly authorized or issued by the Surety company, the Contractor shall furnish and maintain, as above provided, other surety satisfactory to the Commissioner.

All alterations, extensions of Contract Time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing the consent of the surety or sureties of the bonds.

The surety corporation bonds shall be furnished by only those sureties listed in the US Treasury Department Circular 570 and authorized to do business in the State. The bonds shall be accompanied by a certification as to authorization of the attorney-in-fact to commit the surety company and a true and correct statement of the financial condition of said surety company.

Payment for the Performance Bond and the Payment Bond will be made upon commencement of work on the basis of the lump sum bid or the actual cost (gross premium), whichever is less, upon submission of a paid bill and the report of execution issued by the Surety showing the gross premium of the bonds and the broker's fee. Upon Completion, the Department's payment for the Performance and Payment Bond will be adjusted to reflect any increase or decrease in the actual cost of the bonds. Any increase will be based upon the rate schedule certified by the Surety and submitted by the Contractor at the beginning of the Project. If the certified schedule and the paid bill are not submitted at the beginning of the Project, no adjustment will be made. Any increase or decrease in the actual cost of the bonds otherwise known as the adjustment of less than one hundred dollars will be disregarded. The adjustment will be calculated on whichever of the following methods results in the lowest adjustment:

1. The difference between the actual cost paid by the Contractor before the commencement of work and the paid final bill submitted by the surety company or agent.
2. The difference between the actual cost paid by the Contractor before the commencement of work and the final amount as calculated by using the certified schedule submitted at the beginning of the Project.

If the amount of this final bill reflects an increase in the cost of the Performance and Payment Bonds, the Department will pay the Contractor the amount as determined above in the final payment to be made to the Contractor

after Acceptance. If the amount of the final bill reflects a decrease in the cost of the Payment and Performance Bonds, the Department will deduct that amount from the final payment made to the Contractor after Acceptance.

Any increase in the construction layout ratio will not be included in the Surety adjustment.

Payment will be made under:

Pay Item

PERFORMANCE BOND AND PAYMENT BOND

Pay Unit

LUMP SUM

103.06 Execution and Escrow of the Contract.

- 1. Execution.** The successful Bidder shall properly and duly execute a Contract in accord with Contract Documents and return same, together with the Performance Bond and Payment Bond, within ten State Business Days of the date of Award or Conditional Award. The successful bidder shall also provide the Department, within the same ten State Business Day period, proof of a valid business registration with the Division of Revenue in the New Jersey Department of Treasury. The Contract will not be entered into by the Department unless the Bidder first provides proof of a valid business registration in compliance with N.J.S.A. 52:32-44 (P.L. 2001, c134). If said Contract is not executed by the Commissioner within 45 State Business Days following receipt from the Bidder of the executed Contract and Performance Bond and Payment Bond, the Bidder may within its discretion withdraw its bid without penalty; where the Bidder chooses not to withdraw prior to the Commissioner executing said Contract, the Bidder shall be deemed to have waived any claim for Additional Compensation or for an extension of time. The Contract shall not become effective until it has been fully executed by all parties.
- 2. Escrow.** The successful Bidder who would like to participate in the Non-Binding Mediation of any and all claims arising under the Contract, as provided in Subsection 107.02, shall, within the same ten State Business Day period, escrow all of its bid preparation documents, which are dated prior to or as of submission of the bid proposal to the Department, in sealed boxes with a Custody Agent, and return to the Department a Custody Agreement fully executed by the Bidder and the Custody Agent. The Bidder shall also certify under oath that the escrowed documents have not been modified changed or corrected in any manner since the date appearing on said documents and that the documents escrowed constitute all related documents relied upon in preparing the proposal. The Custody Agreement Form will be provided by the Department at the time of Award and shall be completed in its entirety and include a detailed list of all documents contained in the boxes of bid documents placed in escrow.

A failure by the Bidder to escrow its bid preparation documents and to return to the Department the fully executed Custody Agreement within ten State Business Days shall constitute a waiver by the Bidder of any ability or opportunity to participate in the Non-Binding Mediation of claims arising under the Contract. The use and preservation of escrowed bid documents shall be governed by the terms of the escrow agreement that is to be executed by the Contractor and the escrow agent, which agreement shall be in accord with the form provided by the Department. Upon Completion of the Contract, the Contractor may apply to the Department to release any escrowed documents so long as there are no pending claims.

103.07 Failure to Execute Contract.

Failure on the part of the Bidder to whom the Contract has been awarded to execute and deliver the Contract as provided in [Subsection 103.06](#), and the bonds as provided in [Subsection 103.05](#), in the manner and within the time provided, is just cause for annulment of the Award or Conditional Award and for the exclusion of the Bidder from bidding on subsequent projects for such period as the Commissioner may deem appropriate. If the Award is annulled for the above reasons, the Proposal Bond, as described in [Subsection 102.10](#), shall become forfeited and the State may proceed to recover under the terms and provisions of the Proposal Bond. Award may then be made to the next lowest responsible Bidder, or the Work may be readvertised and constructed under contract, or otherwise, as the Department may decide. The successful Bidder may file with the Commissioner a written notice, signed by the Bidder or the Bidder's authorized representative, specifying that the Bidder refuses to execute the Contract. The filing of such notice has the same force and effect as the failure of the Bidder to execute the Contract and furnish a Performance Bond and Payment Bond within the time herein before prescribed.

SECTION 104 - SCOPE OF WORK

104.01 Intent.

The intent of the Contract Documents is to describe a functionally complete and aesthetically acceptable Project to be constructed and completed by the Contractor in every detail according to the Contract Documents. Any Work that may be reasonably inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. Where the Contract Documents describe portions of the Work in general terms, but not in complete detail, it is understood that only the best construction practice is to prevail and only materials and workmanship of the first quality are to be used.

Only where the Contract Documents specifically describe a portion of the Project as being performed by others is the Work deemed not to constitute construction of the entire Project.

104.02 Changes.

The Engineer reserves the right to make, in writing, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to satisfactorily complete the Project. Such changes in quantities and alterations do not invalidate the Contract nor release the surety, and the Contractor agrees to perform the work as altered.

If the alterations or changes in quantities significantly change the character of the Work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the Work or by affecting other work cause such other work to become significantly different in character, or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the Contract. The basis for the adjustment shall be agreed upon before the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the Work to be performed under the Contract, the altered work will be paid for as provided elsewhere in the Contract.

The term "significant change" shall be construed to apply only to the following circumstances:

1. When the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction, or
2. When a major item of work, as defined elsewhere in the Contract, is increased in excess of 125 percent or decreased below 75 percent of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original Contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

Changes that solely involve the increase or decrease in the quantity of Pay Items (not involving unit price adjustments pursuant to [Subsection 104.05](#)), the elimination of Pay Items, the adjustment of the estimated quantities in the Proposal as the result of as-built calculations, or minor changes in the Work as provided in [Subsection 104.03](#), may be affected by Field Order or Change Order, as determined by the Engineer. All other changes will be included in a Change Order that specifies, in addition to the Work to be done, an adjustment of Contract Time, if any, and the basis of compensation for such Work. A Change Order does not become effective until the Engineer has approved the proposed Change Order submitted by the Resident Engineer.

Upon receipt of a Field Order or Change Order, the Contractor shall proceed with the ordered Work. Where the changes involved require a Change Order, and a Change Order has not yet been issued, the Resident Engineer may direct, by Field Order, that the Contractor proceed with the desired Work, and the Contractor shall comply. In such cases, the Engineer will, as soon as practicable, issue a Change Order for such Work.

When the compensation for an item of Work is subject to adjustment under the provisions of [Subsections 104.04](#) through [104.09](#), the Contractor shall, upon request, furnish the Engineer with adequate detailed cost data for such item of Work. If the Contractor requests an adjustment in compensation for an item of Work as provided in [Subsection 104.05](#), such cost data shall be submitted with the request.

In addition to Field Orders and Change Orders, the terms and conditions relating to changes may be negotiated with the Contractor. If the Contractor signifies acceptance of such terms and conditions by executing a Supplementary Agreement, and if such Supplementary Agreement is approved by the Engineer and issued to the Contractor, payment according to the terms and conditions as to compensation and adjustments in the Contract Time therein set forth constitutes full compensation and a mutually acceptable adjustment of Contract Time for all Work included therein or required thereby. The Contractor agrees that a proposed Supplementary Agreement that is not approved by the Engineer or

that is rejected by the Contractor shall have no effect and that neither may attempt to use it in any litigation that may result from the Contract.

No claim for additional compensation shall be made because of any such alteration, deviation, addition to, or omission from the Work required by the Contract, by reason of any variation between the approximate quantities in the Proposal and the quantities of Work as done, by reason of Extra Work, by reason of elimination of Pay Items, or by reason of changes in the character of Work except as allowed in this Section. Attention is directed to [Subsections 102.08](#) and [107.27](#).

No claim for additional compensation or extension of Contract Time within the scope of this Section will be allowed if asserted after Acceptance.

104.03 Minor Changes in the Work.

The Resident Engineer has the authority to order minor changes in the Work not involving an adjustment to the unit or lump sum prices, or an adjustment to Pay Items, or an extension of Contract Time, and not inconsistent with the intent of the Contract Documents. Such changes may be effected by Field Order and are binding on the Department and the Contractor. Additional compensation or extension of Contract Time will not be allowed.

104.04 Procedure and Protest.

A Field Order or Change Order may be issued at any time. Should the Contractor disagree with any terms or conditions set forth in a Field Order or a Change Order, the Contractor shall submit a written protest to the Engineer within 15 days after the receipt of such Field Order or Change Order on forms furnished by the Department. The protest shall state the points of disagreement, and, if possible, the specification references, quantities, and costs involved. The protest shall be a specific, detailed statement of the points of disagreement, and the Engineer reserves the right to reject general protests. Rejected general protests that are not cured by the submission of a specific, detailed statement within five days of such rejection will not be considered. If a written protest is not submitted, payment will be made as set forth in the Field Order or Change Order and such payment constitutes full compensation for all Work included therein or required thereby and also is conclusive as to any Contract Time adjustments provided for therein or in establishing that no Contract Time adjustment was warranted.

Protests related to Work ordered by Field Order, but as to which a Change Order is required, shall be made within 15 days after receipt of the Field Order. Subsequent issuance of the Change Order shall not be the basis for a protest except to the extent that the Change Order differs materially from the Field Order.

Where the protest concerning a Field Order or a Change Order relates to compensation, the compensation payable for all Work specified or required by said Field Order or Change Order to which such protest relates, if later deemed appropriate by the Engineer, will be determined as provided in [Subsections 104.05](#) through [104.08](#) and [Subsection 109.03](#). The Contractor shall keep full and complete records of the cost of such Work and shall permit the Engineer to have such access thereto consistent with [Subsection 109.12](#), as may be necessary to assist in the determination of the compensation payable for such Work.

Where the protest concerning a Change Order relates to the adjustment of Contract Time, the time to be allowed, if later deemed appropriate, will be determined as provided in [Subsection 108.11](#).

104.05 Increased or Decreased Quantities.

Increases or decreases in the quantity of a Pay Item will be determined by comparing the total as-built quantity of such item of Work with the quantity contained in the Proposal. In making such a comparison, quantities that are the subject of Supplementary Agreements or Change Orders for Extra Work will not be considered.

Minor Pay Items are not eligible for any adjustment in unit price regardless of how much the total as-built quantity varies from the quantity contained in the Proposal unless eligible for adjustment pursuant to [Subsection 104.07](#).

If the total pay quantity of any Major Pay Item varies from the estimate contained in the Proposal by more than 25 percent, payment will be made according to the following categories:

- 1. Increases of More Than 25 Percent.** Should the total as-built quantity of any Major Pay Item exceed the estimate contained in the Proposal by more than 25 percent, the Work in excess of 125 percent of such estimate will be paid for by adjusting the unit price, as hereinafter provided. Alternatively, the Contractor and Engineer may negotiate a Supplementary Agreement for such adjustment.

Such adjustment of the unit price is to be the difference between the unit price and the actual unit cost, which will be determined as hereinafter provided. If the costs applicable to such item of Work include overhead, such overhead will be deemed to have been recovered by the Contractor by the payments made for the 125 percent of the Contract quantity for such item already paid, and in computing the actual unit cost, such overhead will be excluded. Subject to the above provisions, such actual unit costs will be determined in the same manner as if the Work were to be paid for on a Force Account basis as provided in [Subsection 109.03](#).

When the compensation payable for the number of units of an item of Work performed in excess of 125 percent of the Engineer's estimate is less than \$1,500 at the applicable unit price, the Engineer reserves the right to make no adjustment in said price if the Engineer so elects, except that an adjustment will be made if requested in writing by the Contractor.

2. **Decreases of More than 25 Percent.** Should the total as-built quantity of any Major Pay Item be less than 75 percent of the estimate contained in the Proposal, an adjustment in compensation pursuant to this Subsection will not be made unless the Contractor so requests in writing. If the Contractor so requests, the quantity of said item performed will be paid for by adjusting the unit price as hereinafter provided, or at the option of the Engineer, payment for the quantity of the Work of such item performed will be made on the basis of Force Account as provided in [Subsection 109.03](#), provided, however, that in no case shall the payment for such Work be less than that which would be made at the unit price bid. Alternately, the Contractor and Engineer may negotiate a Supplementary Agreement for such adjustment.

Such adjustment of the unit price is to be the difference between the unit price and the actual unit cost, which will be determined as hereinafter provided, of the total as-built quantity of the item, including overhead. Such actual unit cost will be determined in the same manner as if the Work were to be paid for on a Force Account basis as provided in [Subsection 109.03](#).

The payment for the total as-built quantity of such item of Work is not to exceed the payment that would be made for the performance of 75 percent of the estimate contained in the Proposal for such item at the original unit price bid.

The Contractor further understands and agrees that neither the procedure established under this Subsection nor the review of claims by the Department pursuant hereto shall in any way affect the requirement of the filing of a Notice of Potential Claim or the filing of a suit pursuant to the provisions of NJSA 59:13-1 *et seq.*

104.06 Eliminated Items.

Should any Pay Item contained in the Proposal be found unnecessary for the proper completion of the Work, the Engineer may, upon written order to the Contractor, eliminate such item from the Contract. In such case compensation, if any is appropriate, will be made as provided in this Subsection.

If acceptable material is ordered by the Contractor for the eliminated item before the date of notification of such elimination and if orders for such material cannot be canceled, it will be paid for at the actual cost to the Contractor. In such case, the material paid for becomes the property of the State, and the actual cost of any further handling will be paid for. If the material is returnable to the vendor and if the Engineer so directs, the material shall be returned, and the Contractor will be paid for the actual cost or charges made by the vendor for returning the material. The actual costs of handling returned material will be paid for.

The actual costs or charges will be computed in the same manner as if the Work were to be paid for as provided in [Subsection 109.03](#). However, no profit will be allowed.

A reduction in the Contract Time may be made by the Engineer pursuant to [Subsection 109.11](#), if appropriate.

104.07 Changes in Character of Work.

If the Engineer determines that an ordered change in the work materially changes the character of the work of a Pay Item, or a portion thereof, and if the change substantially increases or decreases the actual unit cost of such changed item as compared to the actual or estimated cost of performing the work of said item according to the Contract Documents originally applicable thereto, in the absence of a Supplementary Agreement or unprotested Change Order specifying the compensation payable, an adjustment in compensation will be made according to the following:

1. The basis of such adjustment in compensation will be the difference between the actual unit cost to perform the work of said item or portion thereof involved in the change as originally planned and the actual unit cost of performing the work of said item or portion thereof involved in the change, as changed. Actual unit costs will be determined in the same manner as if the work were to be paid for as provided in [Subsection 109.03](#), or such adjustment as is agreed to in a Supplementary Agreement. Any such adjustment is to apply only to the portion of the work of said item actually changed in character.
2. At the option of the Engineer, the work on said item or portion of item, which is changed in character will be paid for as provided in [Subsection 109.03](#).
3. If the compensation for an item of Work is adjusted under this Subsection, the costs recognized in determining such adjustment and quantity involved will be excluded from consideration in making an adjustment for such item of Work under the provision in [Subsection 104.05](#).

Failure of the Engineer to recognize a change in character of the Work at the time a Field Order or Change Order is issued does not relieve the Contractor of the duty and responsibility of filing a written protest within the five-day limit as provided in [Subsection 104.09](#).

An adjustment in compensation will be made if there is an increase or decrease in excess of five percent in solid waste disposal costs incurred as a result of lawful increases or decreases in the rates, fees, or charges of the solid waste facility to be used or due to an order issued by the NJDEP in conjunction with the Bureau of Public Utilities directing the solid waste to be disposed at a solid waste facility other than the disposal facility previously used. Adjustments in compensation will be made according to the provisions above. Adjustments in compensation will not be made if actual disposal costs have changed by less than five percent of the fee structure provided according to the requirements of [Subsection 108.04](#).

104.08 Extra Work.

The Department reserves the right to require Extra Work as needed for the satisfactory completion of the Project. Such Work will be designated as Extra Work when it is determined by the Engineer that such Work is not covered by any of the various items for which there is a bid price or combinations of such items. In the event portions of such Work are determined to be covered by some of the various items for which there is a bid price or combinations of such items, the remaining portion of such Work will be designated as Extra Work. Extra Work also includes Work specifically designated as Extra Work in the Contract Documents.

The Contractor shall do such Extra Work and furnish labor, material, and equipment therefore upon receipt of a Change Order, Field Order, or Supplementary Agreement. In the absence of such, the Contractor shall not perform, nor be entitled to payment for, such Extra Work.

Payment for Extra Work required pursuant to the provisions in this Subsection will be made as provided in [Subsection 109.03](#), or as agreed to in a Supplementary Agreement.

If the Contractor and the Engineer cannot agree on a Supplementary Agreement for Extra Work and the Engineer deems it inadvisable to have such Work completed on a Force Account basis as provided in [Subsection 109.03](#), the Commissioner may elect to have such Work completed by others, and the Contractor shall not interfere therewith nor have any claim for additional compensation as the result of such election.

104.09 Notification of Changes.

The Contractor shall promptly report State conduct that the Contractor believes to constitute a change to the Contract. Except for changes identified as such pursuant to [Subsections 104.02](#) and [104.03](#), the Contractor shall promptly notify the Engineer in writing, on forms provided by the Department, within five days from the date that the Contractor identifies any State conduct including actions, inactions, and written or oral communications, which the Contractor regards as a change to the Contract terms and conditions. In no event shall the Contractor begin Work or incur any expenses with relation to the claimed change before giving notice.

The notice shall state the following on the basis of the most accurate information available to the Contractor:

1. The date, nature, and circumstances of the conduct regarded as a change.
2. The name, function, and activity of each State individual and official or employee involved in or knowledgeable about such conduct.
3. The identification of any documents and the substance of any oral communication involved in such conduct.
4. In the instance of alleged acceleration of scheduled performance or delivery, the basis for the Contractor's claim of accelerations.
5. In the instance of alleged Extra Work, the basis for the Contractor's claim that the Work is extra.
6. The particular elements of Contract
 - a. What Pay Items have been or may be affected by the alleged change.
 - b. What labor or materials or both performance for which the Contractor may seek additional compensation under this Section including: have been or may be added, deleted, or wasted by the alleged change and equipment idled, added, or required for additional time.
 - c. To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change.
 - d. What adjustments to Contract price, delivery schedule, and other provisions affected by the alleged change are estimated.

Following submission of the notice, the Contractor shall diligently continue performance of the Contract to the maximum extent possible according to the Contract Documents, unless such notice results in a direction by the Engineer, in which event the Contractor shall continue performance in compliance therewith, provided, however, that if the

Contractor regards such direction itself as a change, notice shall be given as provided above. All directions, orders, and similar actions of the Engineer will be reduced to writing and copies thereof furnished to the Contractor.

The Resident Engineer will promptly, and in any event within ten days after receipt of notice, respond thereto in writing. In such response, the Resident Engineer will do one of the following:

1. Confirm that the conduct of which the Contractor gave notice constitutes a change, and when necessary direct the mode of further performance.
2. Revise or rescind any communication regarded as a change.
3. Deny that the conduct of which the Contractor gave notice constitutes a change, and when necessary direct the mode of further performance; or
4. In the event the Contractor's notice information is inadequate to make a decision under Items 1, 2, or 3 of this paragraph, advise the Contractor as to what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Department will respond.

If the Engineer confirms that State conduct effected a change as alleged by the Contractor, and such conduct causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under the Contract, whether changed or not changed by such conduct, an adjustment in compensation will be made according to the provisions of this Section, and the Contract will be modified in writing accordingly. In the case of drawings, designs, or specifications that are defective and for which the State is responsible, the adjustment will be made to include the cost and extension of Contract Time for delay reasonably incurred by the Contractor in attempting to comply with such defective drawings, designs, or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Engineer pursuant to this Subsection is included in the adjustment in compensation, the Engineer has the right to prescribe the manner of disposition of such property. Adjustments will not be made that include increased costs or extensions of Contract Time for delay resulting from the Contractor's failure to provide adequate notice or to continue performance as provided above. Any adjustments of Contract Time will be made pursuant to [Subsection 108.11](#).

The failure of the Contractor to give notice pursuant to the provisions of this Subsection shall constitute a waiver of any and all claims and damages that could have been avoided or mitigated had such timely notice been given. Moreover, no action or inaction of any person shall constitute a waiver of the State's absolute right to receive written notice of an alleged claim pursuant to this Subsection.

The Contractor further understands and agrees that neither the procedure established under this Subsection nor the review of claims by the Department pursuant hereto shall in any way affect the requirement of the filing of a Notice of Potential Claim or the filing of a suit pursuant to the provisions of NJSA 59:13-1 *et seq.*

104.10 Rights In and Use of Materials Found on the Work.

The Contractor shall not excavate or remove any material that is outside the grading limits, as indicated on the Plans, without written authorization. The Contractor will not be paid for the excavation so authorized and shall replace the excavated material at no cost to the State.

104.11 This Subsection is intentionally left blank.

104.12 Final Cleanup.

Before final inspection and Completion, borrow and local material sources and all areas occupied by the Contractor in connection with the Work shall be cleaned of all rubbish, excess materials, temporary structures, and equipment, and all parts of the Work shall be left in an acceptable condition.

If the Contractor fails to complete final cleanup within the time stated in the Project Specifications for the completion of the Contract or within such further time as may have been granted according to the provisions of the Contract, the Contractor shall pay the State liquidated damages pursuant to [Subsection 108.16](#).

Payment for final cleanup will be made on a lump sum basis.

Payment will be made under:

Pay Item
FINAL CLEANUP

Pay Unit
LUMP SUM

SECTION 105 - CONTROL OF WORK

105.01 Authority of the Engineer.

The Engineer will decide all questions that may arise as to the quality and acceptability of the Work and as to the rate of progress of the Work, all questions that may arise as to the interpretation of the Contract Documents, all questions as to the acceptable fulfillment of the Contract on the part of the Contractor, and all questions as to compensation. All questions as to the interpretation of the Contract Documents shall be submitted to the Resident Engineer in writing.

The Engineer has the authority to suspend the Work wholly or in part pursuant to [Subsection 108.14](#) or [108.15](#) and to suspend partial payments under [Subsection 109.05](#) due to the failure of the Contractor to correct conditions unsafe for the workers or the general public, for failure to carry out provisions of the Contract, or for failure to carry out orders. The Engineer may also suspend the Work wholly or in part for such periods as deemed necessary due to unsuitable weather, for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed to be in the public interest.

105.02 Communications.

Unless otherwise directed, all communications with the Department shall be sent to the Resident Engineer. Where communications are directed to persons other than the Resident Engineer, a clear copy shall be sent to the Resident Engineer.

105.03 Plans and Specifications.

The Plans consist of general drawings and show such details as are necessary to give a comprehensive idea of the construction contemplated. The Contractor shall keep one set of Plans available on the Project site at all times. All alterations affecting the requirements and information given on the Plans will be authorized in writing.

Omissions from the Plans or Specifications of details of Work which are manifestly necessary to carry out the intent of the Contract Documents, or which are customarily included, shall not relieve the Contractor from including such omitted details of Work, but they shall be included as if fully and correctly set forth and described.

Plans and Specifications will be furnished upon request at a charge according to rates on file with the Department. The successful bidder receives one copy of the governing Standard Specifications and the number of sets of Plans specified below, without charge, upon Award if requested.

One copy of Project Specifications, and Addenda is furnished, without charge, with each set of the Plans. Additional copies of Project Specifications, and Addenda are available upon request, at a charge according to the Departmental rate, except that after Award a maximum of five additional free copies will be furnished to the successful bidder upon request.

Request for Plans, Project Specifications, and Proposal Forms shall be directed to the Cashier of the Department, accompanied by a check for the proper amount drawn to the order of the New Jersey Department of Transportation. Requests for those items furnished without charge shall be directed to the Bureau of Construction Services, Procurement.

Table of Plans Furnished Without Charge

Amount of Contract		Sets of Plans
For More Than	To and Including	
\$ 0	\$ 500,000	1
500,000	1,000,000	2
1,000,000	5,000,000	3
5,000,000	10,000,000	4
10,000,000	--	5

105.04 Working Drawings.

The Contractor shall submit Working Drawings for those particular items of Work or methods of construction (whether permanent or temporary) for which there are no specific detailed drawings contained within the Contract Documents before performing such items of work or performing such methods of construction. Working Drawings submitted by the Contractor shall only detail particular work to be performed under the Contract Documents and shall not change the Plans or Specifications. A design change shall only be implemented in compliance with the Department procedure for review and approval of a change of plan. The Engineer will return, without further review, any and all Working Drawings found by the Engineer to be repetitious or duplicative of items of Work specified or detailed within

the Contract Documents or found to constitute an apparent change of plan; under such circumstances the Contractor shall have no claim for any delays incurred by reason of such improper submittal.

The Contractor shall review, approve, sign, and submit all Working Drawings in orderly sequence so as not to delay the Work, or the work of any other contractor. The Contractor shall be deemed to represent by its act of submitting a Working Drawing for review and approval for final design of conceptual plans (as more fully stated below) or certification for fabrication of items of Work, that it has in fact verified all field measurements and catalog numbers and other criteria and has determined field construction criteria, materials, and other criteria and that the Contractor has checked and coordinated each submitted Working Drawing with the requirements of the Contract Documents and the Work.

The Engineer, upon receipt of a submitted Working Drawing, will cause the Working Drawing to be reviewed with reasonable promptness but only for conformance with the design concept of the project, and with the details and criteria set forth in the Contract Documents. The designated design unit may either certify compliance, conditionally certify compliance with notation or comment or reject Working Drawings as submitted. It shall be within the sole discretion of the designated design unit whether or not a submitted Working Drawing warrants being “certified,” “conditionally certified,” or “not certified.”

A stamp, signed by the designated design unit, reflecting the determination rendered will be affixed to the submitted drawing. Certification of the submitted Working Drawings, without condition, by the designated design unit will be reflected by a stamp stating “CERTIFIED.” Conditional certification by the designated design unit will be reflected by a stamp stating “CERTIFIED AS NOTED.” Rejection or non-certification will be reflected by a stamp stating “REVISE AND RESUBMIT.”

Where submitted Working Drawings are not certified due to nonconformance with the Contract Documents, poor quality, or other stated problem or error, the submitted Working Drawings will be returned directly to the Contractor by the designated design unit for the project with a copy to the Resident Engineer. The Contractor shall make any and all required revisions, corrections, additions and changes to the Working Drawings and otherwise comply with the directions of the designated design unit and shall promptly re-submit to the Engineer appropriately revised Working Drawings along with the required number of copies. The Contractor shall direct specific attention to the Engineer in writing or on resubmitted Working Drawings to those revisions, corrections, changes, or additions that were not requested or directed by the designated design unit on previous submissions. The above-described process shall apply to all re-submissions and revised Working Drawings. The carrying out of the Work or the ordering of those materials relating to submitted Working Drawings before certification or conditional certification is rendered by the designated design unit in writing shall constitute a cause for rejection or non-certification by the Engineer of the submitted Working Drawings and/or a cause for the temporary suspension of the Work so affected, pursuant to [Subsection 108.15](#).

Where the Working Drawings are either certified or conditionally certified, the designated design unit for the Project will return the Working Drawings directly to the Contractor with a copy to the Resident Engineer. Upon receiving certification or conditional certification from the designated design unit in the form of a signed stamp affixed to the submitted Working Drawings, the Contractor may then order material and carry out any work relating to a submitted Working Drawing; however, where conditional certification is granted by the designated design unit, as reflected by a signed stamp affixed to the submitted drawing stating “CERTIFIED AS NOTED,” the Contractor, as a condition of certification, shall submit to the Engineer revised Working Drawings incorporating or satisfying the conditions of the certification as reflected in the designated design unit’s notes or comments within 30 days of receipt of the conditionally certified Working Drawings by the Contractor.

Unless prior written approval of the Engineer has been given to the Contractor, the Contractor shall not make any deviations from the approved, certified or conditionally certified Working Drawings. Where the Contractor fails to abide by the Working Drawings as approved or certified or fails to abide by the conditions of a conditional certification, while performing that item of Work to which same applies, such failure shall constitute a cause for the temporary suspension of such work pursuant to [Subsection 108.15](#).

The Engineer’s approval of Working Drawings, does not relieve the Contractor of any responsibility or liability or modify such responsibility or liability that the Contractor may have under the Contract Documents or under law or equity arising out of or from the Working Drawings, for errors or omissions contained within the Working Drawings or for work carried out pursuant thereto. Also, the designated design unit’s certification or conditional certification or the Engineer’s approval of Working Drawings shall not be the basis of a claim by the Contractor against the State for indemnification, extra work, change in the character of the work or other similar cause of action. The Engineer’s approval of a separate item of work is not to be construed as certification or approval of an assembly in which the item of work functions; the entire assembly must also be certified or conditionally certified by the designated design unit or approved by the Engineer.

Working Drawings shall be 22" x 36" sheets or 8½" x 11" sheets. Seven copies shall be submitted to the designated design unit for review and a copy of the transmittal letter shall be sent to the Resident Engineer. One additional copy each shall be submitted when an outside testing agency or an outside authority is involved in the Project. The above submittal procedure will simultaneously facilitate both certification and distribution.

Each Working Drawing, shall be identified by a title block in the lower right-hand corner, containing the following minimum information:

1. Contract number
2. Municipality and County
3. Contractor's name
4. Fabricator's name (if applicable).
5. Data Processing (D.P.) Number
6. Title of drawing
7. Sheet number

Each 22" x 36" Working Drawing requiring certification of fabrication, shall contain two blank blocks placed directly above the title block. One block, designated for design unit certification, shall be used for the stamped markings "CERTIFIED" and "CERTIFIED AS NOTED" and, "REVISE AND RESUBMIT" and the other block is designated for the Contractor's approval stamp. Each 22" x 36" Working Drawing requiring approval of final design, shall contain three blank blocks placed directly above the title block. One block, designated for design unit recommendation for approval, shall be used for the signature and stamped marking "RECOMMENDED FOR APPROVAL," and the second block designated for the Engineer's approval, shall be used for the signature and stamped marking "APPROVAL BY THE ENGINEER." The third block is designated for the Contractor's approval stamp. All calculations required for the Working Drawings shall be submitted on 8½" x 11" paper. The calculation submission shall include a cover sheet, which shall also contain a block for an embossed New Jersey Professional Engineer's seal. Each Working Drawing shall contain a revision block, which shall be located to the left and adjacent to the title block. Working Drawings or calculations submitted on 8½" x 11" sheets shall be accompanied by a cover sheet, which shall contain the above blocks; the blocks shall not be included on the other 8½" x 11" Working Drawing/calculation sheets in the submission. The specific format and direction for submission of Working Drawings will be supplied after Award.

The original tracings for each 22" x 36" Working Drawing or the cover sheet for 8½" x 11" Working Drawings or calculations shall include the Contractor's approval stamp, containing the word "APPROVED," and the Contractor's original signature and date. Future revisions to the original tracing shall have the date within the approval stamp updated with each revision to verify that the revision was reviewed and approved by the Contractor.

Original tracings shall be on 22" x 36," 3.15 mils minimum thickness, polyester film, such as Mylar or Herculene, and shall be done in ink, drafting lead, or similar writing material. All lines and lettering on tracings shall be dense in opacity and of sufficient height and width so as to have residual density to produce microfilm negatives from which legible 11" x 17" prints may be made.

Material specification designations shall be noted on the Working Drawings.

The original tracings (sepias not accepted) cited above shall be furnished to the Resident Engineer thirty calendar days prior to Completion.

All costs for providing the Working Drawings shall be included in the prices bid for the various Pay Items scheduled in the Proposal.

105.05 Conformity with Contract Documents.

All Work performed shall be in conformity with the lines, grades, cross-sections, dimensions, and material requirements, including tolerances shown in the Contract Documents. The purpose of tolerances is to accommodate occasional minor variations from the middle portion of the tolerance range that are unavoidable for practical reasons. When a maximum or minimum value is specified, the production and processing of the material and the performance of the Work shall be so controlled that the Work shall not be preponderantly of borderline quality or dimension. Although measurement, sampling, and testing may be considered evidence of conformity, the Engineer will determine whether the Work deviates from the Contract Documents.

In the event the Engineer finds the Work not in conformance with the Contract Documents but that reasonably acceptable Work has been produced, the Engineer will determine if the Work is to be accepted and remain in place. In this event, the Engineer will document the basis of the acceptability of the Work and provide for an appropriate adjustment in the contract price for such Work as deemed necessary. If an appropriate adjustment cannot be negotiated, the Work shall be removed and replaced or otherwise corrected at no cost to the State.

In the event the Engineer finds the Work not in conformance with the Contract Documents, including tolerances resulting in an inferior or unsatisfactory product, the Work shall be removed and replaced or otherwise corrected at no cost to the State.

Neither the observations of the Engineer in the administration of the Contract, nor inspections, tests, or approvals by persons other than the Contractor relieves the Contractor from its obligation to perform the Work according to the Contract Documents.

105.06 Special Inspection, Testing, or Approval.

Whenever the Engineer considers it necessary or advisable to ensure the proper implementation of the Contract Documents, the Engineer has authority to require special inspection or testing of the Work in addition to that required elsewhere in the Contract Documents, whether or not such Work be then fabricated, installed, or completed. However, neither the Engineer's authority to act under this Subsection, nor any decision made by the Engineer either to exercise or not to exercise such authority, creates a duty or responsibility of the Engineer to the Contractor, any subcontractor, or any of their agents or employees performing any of the Work.

If after commencement of the Work the Engineer determines that any Work requires special inspection, testing, or approval not provided for elsewhere in the Contract Documents, the Engineer will perform such inspection, testing, or approval using Department facilities, by contracting with others for such services, or by instructing the Contractor by Field Order to order special inspection, testing, or approval. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents or, with respect to the performance of the Work, with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof, including the Engineer's additional services made necessary by such failure. If tests reveal no such failure, the Department will bear such costs, and a Supplementary Agreement will be negotiated.

105.07 Coordination of Contract Documents.

The Contract Documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a functionally complete Project.

In case of discrepancy, calculated dimensions will govern over scaled dimensions; Plans will govern over Specifications;

As the Work progresses, it is anticipated that the Contractor shall frequently request information from the Resident Engineer relative to the interpretation and coordination of the Contract Documents. Such applications shall be in writing. Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall request from the Engineer such further explanations as may be necessary and shall conform to them as part of the Contract.

Both parties realize that in performing the Work, field conditions may require modifications in the Plans and quantities of Work involved. Work under all Pay Items must be carried out to meet these field conditions to the satisfaction of the Engineer and according to its directions and the Contract Documents.

The Contractor shall not take advantage of any apparent error or omission in the Contract Documents. In the event the Contractor discovers any discrepancy, error, or omission in the Plans, Specifications, or other Contract Documents, or if there is any doubt or question as to the intent or meaning of the Plans, Specifications, or other Contract Documents, the Contractor shall immediately notify the Resident Engineer in writing. The Engineer will promptly make, in writing, such corrections and interpretations as deemed necessary.

105.08 Cooperation by Contractor.

The Contractor shall give the Work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Engineer, the Department's inspectors, and other contractors in every way possible.

When the Contractor is comprised of two or more persons, firms, partnerships, or corporations functioning on a joint venture basis, said Contractor shall designate in writing, before starting Work, the name of one individual who shall have the authority to represent and act for the joint venture.

The Contractor shall designate in writing before starting Work, a competent, English-speaking superintendent capable of reading and thoroughly understanding the Contract Documents, and thoroughly experienced in the type of construction being performed. The superintendent shall have the authority to represent and act for the Contractor. An alternate to the superintendent, with equal authority and qualifications, may also be designated.

The superintendent or the alternate shall be present at the site of the Project at all times while Work is actually in progress on the Contract irrespective of the amount of Work subcontracted. The superintendent or the alternate shall have full authority to execute orders or direction from the Engineer, without delay, and to promptly supply such

materials, equipment, tools, labor, and incidentals as may be required. When Work is not in progress and during periods when Work is suspended, arrangements acceptable to the Engineer shall be made for any emergency Work that may be required.

Whenever the superintendent or the alternate is not present on the site or at the location of any particular part of the Work where it may be desired to give direction, the Engineer may suspend all of the Work or the particular Work in reference until the superintendent or the alternate is present. Such suspension shall not be the basis of any claim against the State.

105.09 Cooperation with Utilities.

Within the site of the Project there may be public utility structures, and notwithstanding any other clause or clauses of the Contract, the Contractor shall not proceed with its Work until it has made inquiry at the offices of the Engineer, the utility owners and municipal authorities, or other owners to determine their exact location. The Contractor shall notify, in writing, the utility owners and municipalities or other owners involved of the nature and scope of the Project, and of its operations that may affect their facilities or property. Two copies of such notices shall be sent to the Engineer. The Contractor shall also comply with the State's Underground Facility Protection Act and notify the State's One Call System and identify itself as the State's Contractor and specify the route and section number of the Project before performing Work on the Project. The One Call System can be reached by calling 1-800-272-1000.

The Contractor shall also comply with the State's "High Voltage Proximity Act," codified at NJSA 34:6-47.1 to 47.9 inclusive, as amended and supplemented, concerning safety precautions to be taken in the proximity of certain electric conductors installed above ground. In addition, the Contractor's construction operations shall be according to all rules and regulations promulgated by the New Jersey Commissioner of Labor. The Contractor shall follow all applicable rules and regulations issued thereunder, including but not limited to 29 CFR 1926.550 and according to the NEC. The Department of Labor, Office of Safety Compliance may be contacted for the latest rules, regulations, and guidance. Where the Contractor's construction operations are within the proximity of the regulations cited above, the Contractor shall notify the Office of Safety Compliance describing the project and the construction operations proposed by the Contractor to determine compliance. The Contractor shall provide the Resident Engineer with copies of all correspondence and meetings with the Office of Safety Compliance and that the proposed methods of construction are in fact in compliance with the regulations. Should the Contractor change the previously approved method of construction operations, then the Contractor shall be responsible for notifying the Office of Safety Compliance and again obtaining their approval.

The Contractor shall protect, support, and secure all in-place utility facilities so as to avoid damage to them and their interruption of service. The Contractor shall satisfactorily maintain the flow in drains and sewers at all times. The Contractor shall not move utility facilities without the owner's written consent, and the facilities shall be as safe and permanent at Completion as they were before the Contractor's involvement. In the event the Contractor damages a utility facility, the Contractor shall notify the owner immediately and the owner may require the damage to be repaired at the Contractor's expense. The Contractor shall pay for the repair of utility facilities damaged by the Contractor within 30 days of the completed repair or the Commissioner may retain sufficient monies due or about to be due the Contractor to reimburse the owner for the repair of its facility.

The Contractor shall permit the utility owners or their agents access to their facilities at all times.

The Contractor shall cooperate with the utility owners concerned and shall notify them, through the Resident Engineer, not less than ten days in advance of the time it proposes to perform any Work that may endanger or affect their facilities. The Contractor assumes the obligation of coordinating its activities with those of the utilities.

The Contractor is advised that the design for this Contract did not identify any anticipated utility conflicts. However, this Contract does require the Contractor to perform underground excavation and is reminded to call the State's One Call System as specified herein to verify that a conflict does not exist.

105.10 Cooperation Between Contractors.

The Department reserves the right at any time to contract for and perform other or additional work on or near the Project site.

When separate contracts are let within the limits of the Project, or in areas adjacent thereto, the Contractor shall conduct its Work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors. Moreover, the Contractor assumes the positive obligation of cooperating with such other contractors and coordinating its activities with theirs. If there is a difference of opinion as to the respective rights of the Contractor and others doing work within the limits of or adjacent to the Project, the Engineer will decide as to the respective rights of the various parties involved in order to secure the completion of the State's Work in general harmony and in a

satisfactory manner. The decision of the Engineer is final and binding and is not cause for claims by the Contractor for additional compensation.

The Contractor shall assume all liability, financial or otherwise, in connection with its Contract, and hereby waives any and all claims against the Department for additional compensation that may arise because of inconvenience, delay, or loss experienced by it because of the presence and operations of other contractors working within the limits of or adjacent to the Project.

The Contractor shall arrange its Work and shall place and dispose of the materials being used so as not to interfere with the operation of the other contractors within the limits of the Project or adjacent thereto. The Contractor shall join its Work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

The Contractor is not responsible for damage to Work performed on the Contract or on other contracts within or adjacent to the site of the Project that may be caused by or on account of the work of other contractors. The Contractor is responsible for any damage done or caused by its Work or forces to the work performed by other contractors within or adjacent to the site of the Project, and the Contractor shall repair or make good any such damage in a manner satisfactory to the Engineer and at no cost to the State.

The provisions of this Subsection also apply to utilities and their contractors working on the Project site or adjacent thereto.

105.11 Construction Markings , Lines, and Grades.

- A. For Projects with Construction Layout as a Pay Item.** The Contractor shall provide all Work required in connection with the layout for construction of the Project, using the control points and data furnished by the Department .

The Contractor shall furnish all necessary qualified personnel and adequate equipment to preserve such controls throughout the duration of the Contract and shall lay out all of the lines and grades necessary for the complete construction of the Project. The Contractor shall perform pre-condition and post-condition surveys for submittal to the Engineer. The pre-condition survey shall be submitted within five working days prior to the start of dredging. The post-condition survey shall be submitted within five working days of the completion of dredging. The Department will also conduct pre-condition and post-condition surveys to calculate and verify construction Pay Item.

Surveys shall be performed by a Professional Surveyor licensed in the State. For the Contracting Officer to approve the selected survey firm or licensed surveyor, the Contractor must provide documentation indicating that modern electronic horizontal positioning and sounding system equipment will be used for the surveys to be performed as well as documentation verifying the experience of the operators using the equipment. Typical information that will be required, as a minimum, includes the name, model, and year of manufacturer of the electronic equipment, the electronic frequencies of the horizontal positioning equipment and the sounding equipment, and manufacturer's stated positioning and sounding accuracies, and capability of the equipment proposed for usage. In addition, the Contractor must provide the information that a safe and suitable vessel meeting U.S. Coast Guard requirements is available and will be used for operation in the waters where the surveys are to be performed. The Contractor shall submit credentials/qualifications as evidence that qualified, experienced staff are available and will be used for the operation of the vessel as well as the electronic positioning and sounding equipment.

Surveys shall conform to the requirements of USACE Hydrographic Manual, Class 1, EM 1110-2-1003, January 1, 2002, for Class I Surveys.

Survey track lines shall be spaced at intervals of twenty feet, perpendicular to the flow of the river.

Positioning data shall be collected using a Global Positioning System with real-time kinematic correction.

The depth to mudline shall be collected with an Innerspace Model 455 Survey Depth Sounder, or approved equal.

Depth soundings shall be reported at ten-foot intervals along each track line, with the average value of all soundings within a five-foot radius of each point used as the representative value for each point.

Two copies of all surveys shall be submitted on 22" x 36" prints.

Corrected survey data shall be submitted in Microsoft Excel spreadsheet format, or approved equal.

Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records related to the survey including quantity calculations and cross sectional plots to the Contracting Officer. The Contractor shall retain copies of all such materials furnished to the Contracting Officer.

The Contractor shall be responsible for the preservation of all control points furnished by the Department for its use in marking out the Work. If such control points are damaged, lost, displaced, or removed, they shall be reset at no cost to the State.

The Contractor shall be responsible for maintaining the points it has established. Any error or apparent discrepancies found in the Plans or Specifications shall be called to the Engineer's attention in writing for interpretation before proceeding with the Work.

The Contractor shall be responsible for the finished Work conforming to the lines and grades called for on the Plans, and the Contractor shall correct all errors caused by its personnel at no cost to the State.

Payment for construction layout will be made on a lump sum basis. The total in-situ quantity of material in cubic yards that is dredged by the Contractor will be determined by computing the difference of available material between the pre-dredge survey and the post-dredge survey. Available material is defined as material located within the boundaries of the dredged prism as shown on the drawings to include the required dredged depths indicated on the drawings (Plans). Specifically, a quantity of available material will be computed between the dredge prism and the bottom surface shown by the soundings of the Department's pre-dredge survey, and a quantity of available material will be computed between the dredge prism and the bottom surface shown by the Department's post-dredge survey. The difference between these two available quantities (pre-dredge and post-dredge) will constitute the quantity of material dredged. Misplaced materials (including any required removal and placement), excessive dredging, and materials falling or drawn into the cut from beyond the side slope plane or beyond the limits indicated, will be excluded from the quantities for which payment will be made. The Triangulated Irregular Network (TIN) method will be used for quantity determination.

The ratio of payment for construction layout to the lump sum price bid for construction layout shall be the same as the ratio of the Total Adjusted Contract Price exclusive of payment for construction layout, incentives, bonus payments, and Performance Bond and Payment Bond to the Total Contract Price exclusive of the price bid for construction layout and Performance Bond and Payment Bond.

Payment will be made under:

<i>Pay Item</i>	<i>Pay Unit</i>
HYDROGRAPHIC SURVEYS	LUMP SUM

C. Vertical Control. Where construction layout is a Pay Item, and before the beginning of any construction work that requires accurate elevations, the vertical control network shall be verified in the field by the Contractor's Land Surveyor. The Contractor shall be responsible for the verification work. Vertical control is provided for the Project as shown on the Plans. This control must be verified in the field using, at a minimum, third-order, Class I, procedural standards and equipment. In addition, supplemental benchmarks may be required to provide a denser network for efficient construction surveys. Any discrepancies or errors shall be brought to the attention of the Engineer for resolution before proceeding with the Work. The Contractor shall provide the State with the field notes and calculations of the field verification of the vertical control.

D. Horizontal Control. When construction layout is a Pay Item, the Contractor's Land Surveyor shall be responsible to recover, verify, and check the horizontal control shown on the Plans. The Contractor shall be responsible for all the verification work. The field verification shall be performed at the beginning of the Project, as the control line(s) establish(es) a network of control points which are the basis for all subsequent horizontal work on the Project.

The Contractor's Land Surveyor shall use, at a minimum, third-order, Class I accuracy and procedures to establish and re-establish the horizontal control line. The Project baseline(s) shall be verified and established during the early phases of the Project. This baseline establishes a network of control monuments that are the basis for all subsequent horizontal surveys on the Project. Any discrepancies or errors shall be brought to the attention of the Engineer for resolution before proceeding with the Work. The Contractor shall provide the field notes and calculations of the field verification work.

105.12 Authority and Duties of Resident Engineer.

As the direct representative of the Engineer, the Resident Engineer has immediate charge of the engineering details of the Project. The Resident Engineer is responsible for the administration of the Contract. This responsibility includes the authority to reject defective material and to suspend any or all of the Work according to [Subsections 108.14](#) and [108.15](#).

105.13 Duties of the Inspector.

Inspectors employed by the Department are authorized to inspect all Work. Such inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. The inspector is not authorized to alter or waive the provisions of the Contract. The inspector is not authorized to issue instructions contrary to the Contract Documents or to act as foreman for the Contractor; however, the inspector has the authority to reject Work subject to confirmation by the Resident Engineer.

105.14 Inspection of Work.

Each part or detail of the Work is subject to inspection by the Engineer. The Engineer shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection. When the Engineer is in or about the site of the Work in the course of its employment, the Engineer is deemed conclusively to be an invitee of the Contractor. If the Contractor is not the owner of the place where fabrication, preparation, or manufacture is in progress, the owner thereof shall be deemed to be the agent of the Contractor with respect to the obligation assumed hereunder. The Contractor shall make the equipment available to the Engineer and the Design Unit for mounting monitoring equipment and sampling devices at least one working day prior to the start of work. The Contractor or its agent shall be responsible for the payment of claims for injuries to the Engineer due to negligence on the part of the said Contractor or its agent.

The Contractor is responsible for carrying out the provisions of the Contract at all times and for control of the quality of the Work regardless of whether an authorized inspector is present or not. This obligation to perform the Work according to the Contract Documents is not relieved by the observations of the Engineer in the administration of the Contract, nor by inspections, tests, or approvals by others. Work not meeting the Contract requirements shall be made good, and unsuitable Work may be rejected, notwithstanding that such Work had been previously inspected and approved by the Department or that payment therefore has been included in a monthly estimate certificate.

105.15 This Subsection is intentionally left blank.

105.16 Removal of Unacceptable and Unauthorized Work.

All Work that does not conform to the requirements of the Contract is unacceptable unless otherwise determined acceptable under the provisions in [Subsection 105.05](#). Unacceptable Work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, found to exist before Acceptance, shall be removed immediately and replaced in an acceptable manner at no cost to the State.

Work shall not be done without lines and grades having been given by the Engineer or the Contractor as provided under [Subsection 105.11](#). Work done contrary to the instructions of the Engineer, Work done beyond the lines shown on the Plans, except as herein specified, or any Extra Work done without authority is considered as unauthorized and will not be paid for under the provisions of the Contract. Work so done may be ordered removed or replaced at no cost to the State. The costs of treatment of dredged material in excess of 5000 cubic yards will be subject to deduction from the monies due or that may become due the Contractor.

If the Contractor fails to comply promptly with any order of the Engineer made under the provisions of this Subsection, the Engineer will have authority to cause unacceptable Work to be removed or replaced by others and to deduct the costs thereof from any monies due or that may become due the Contractor.

105.17 This Subsection is intentionally left blank.

105.18 Automatically Controlled Equipment.

Whenever equipment is required to be operated automatically under the Contract and a breakdown or malfunction of the automatic controls occurs, the equipment may be operated manually or by other methods only for the remainder of the Working Day on which the breakdown or malfunction occurs, provided this method of operation produces results that otherwise meet the Specifications.

105.19 This Subsection is intentionally left blank.

105.20 This Subsection is intentionally left blank.

105.21 This Subsection is intentionally left blank.

105.22 Substantial Completion.

When the Contractor determines that the Work is substantially complete, the Contractor shall prepare a written notice thereof for submission to the Engineer listing the items remaining to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work according to the Contract Documents. If the Engineer determines that the Work is substantially complete, the Engineer will then prepare a letter which states the date of Substantial Completion and establishes a reasonable time within which the Contractor shall perform the final cleanup, and repair unacceptable Work, which time may be before Contract Time as modified. The letter will be submitted to the Contractor for its prompt compliance therewith.

If, however, the inspection discloses that the Work is not substantially completed to the Engineer's satisfaction, the Engineer will give the Contractor the necessary instructions for completion and correction of same, and the Contractor shall immediately comply with and execute such instructions. Upon completion and correction of the Work, the Contractor shall renotify the Engineer and another inspection will be made.

105.23 Completion and Acceptance

Upon receipt by the Engineer of written notice from the Contractor that the Work has reached Completion and is ready for final inspection and Acceptance, the Engineer will promptly make such inspection. When such inspection indicates that the Work is in compliance with the Contract, the Engineer will promptly begin the process to issue a Certificate of Completion stating that, to the best of the Engineer's knowledge, information, and belief, and on the basis of observations and inspections, the Work has been completed according to the terms and conditions of the Contract. If, however, the final inspection discloses that the Work has not reached Completion, the Engineer will give the Contractor the necessary instructions for the correction of deficiencies, and the Contractor shall immediately comply with and execute such instructions. Upon correction of the deficiencies, the Contractor shall renotify the Engineer, and another inspection will be made. This procedure is to be repeated until a Certificate of Completion is issued.

At the request of the Contractor, the Engineer may issue a Certificate of Completion without receiving all required documents, certificates, or proofs of compliance. The Contractor's request must satisfactorily establish that the Contractor could not reasonably and in good faith provide some of the required documents, certificates, or proofs of compliance at a time contemporaneous with Completion and with the Project being ready for use by the State to the degree contemplated by the Contract. In such instances where a Certificate of Completion is issued, the Contractor shall expeditiously attempt to provide the exempted document, certificate, or proofs of compliance. Final payment will not be made, however, until all such documents, certificates, and proofs of compliance have been satisfactorily executed and delivered to the Engineer.

The Certificate of Completion is issued establishing Completion as of the date of the notice or re-notice from the Contractor. If the Commissioner concurs in the Certificate of Completion, the Contractor will be notified of Acceptance and the date thereof.

After Acceptance, the Contractor is relieved of the duty of maintaining and protecting the Work as a whole, and is not required to perform any further Work thereon. In addition, the Contractor is relieved of its responsibility for damage to the Work that may occur after Acceptance. However, nothing herein shall be construed to limit the provisions of [Subsections 107.22, 107.23, 107.26, and 109.14.](#)

SECTION 106 - CONTROL OF MATERIAL

106.01 Source of Supply and Quality Requirements.

All materials for the Project shall be furnished by the Contractor and shall be new, unless otherwise specifically prescribed in the Contract Documents. The materials shall conform to the requirements of the Contract Documents and shall be from approved sources. Only materials that have been approved by the Engineer shall be used.

All aggregate producing facilities supplying materials shall have in place an approved Quality Control Plan which conforms to the minimum requirements of the "Requirements for an Aggregate Products Quality Control Plan." A current copy of the referenced document can be obtained from the Bureau of Materials. Producers who do not have an approved Quality Control Plan will be removed from the Approved Aggregates List, and will not be permitted to supply material.

Materials will not be approved from firms and individuals suspended or debarred by the Department or included in the Report of Suspensions, Debarments, and Disqualification of Firms and Individuals as maintained by the Department of the Treasury, Division of Building and Construction, Bureau of Contractor Prequalification.

Promptly after the execution of the Contract, the Engineer shall be notified on Materials Questionnaire Forms furnished by the Department of the sources of materials expected to be used during the six-month period thereafter.

Such notice shall be received by the Engineer no later than ten days before the shipment of materials from a previously approved source, and no later than 30 days before the shipment of materials from a source not previously approved, except that, with the Engineer's consent, shipments of materials from approved stocks may be permitted to be made three days after notice to the Engineer. Within 12 hours after receiving a shipment of materials, the Engineer shall be notified of the kind, size, quantity, and location thereof.

In any item of construction, the sources, brands, or types of materials shall not be changed without the consent of the Engineer. Request for such changes shall be filed with the Engineer the number of days in advance of such changes as required above. The request shall state the name and address of the owner, the location of the proposed source, the method of shipment, and the intended use of the material.

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

The notice provisions of this Subsection shall not be so construed as to relieve the Contractor of its obligation to ensure that all materials required for the construction of the Project shall be available at the time and place necessary for their incorporation into the Work in order that the completion date set forth in Subsection 108.10 is met. If any doubt exists as to the timely availability of any material, the Engineer shall be immediately informed, in writing, of the potential problem and of the action to be taken to guarantee the availability of such material. Stockpiles of materials whose availability is or may be problematical shall be established at an early date.

106.02 This Subsection is intentionally left blank.

106.03 Materials, Inspections, Tests, and Samples.

- A. General.** All materials will be inspected, tested, and approved before incorporation in the Work. Unapproved materials may be used only with written permission of the Engineer. In the absence of such written permission, unapproved materials will not be paid for and shall be removed at no cost to the State.

All materials being used are subject to inspection, testing, or rejection at any time before Acceptance. A representative of the Department will take samples. Results of tests made with the Department Laboratory's apparatus and conforming to the requirements specified in the prescribed methods of tests, are official and copies of test results will be furnished upon request.

Testing will be performed according to ASTM methods of tests or according to specified Departmental test methods.

Nothing in this Subsection shall be construed to limit the right of the Engineer to order special inspection or tests as provided in [Subsection 105.06](#).

Except as otherwise provided, all materials will be tested at the expense of the State.

Certain materials as specified will be accepted on the basis of Certifications of Compliance according to [Subsection 106.04](#).

The required number of samples and rate of sampling, or Certifications of Compliance for the various materials are as specified in the respective methods of test or in the Subsections applicable to that particular material or Pay Item.

Additional samples shall be required whenever, in the opinion of the Engineer, additional tests are required to determine the quality and suitability of materials for their respective uses.

- B. Sampling and Field Testing of Soil Aggregates.** The sampling and field testing of soil aggregates shall conform to the general requirements for sampling and testing specified in [Section 901](#), and with the following requirements, provided, however, that the following requirements shall govern where there is any conflict or inconsistency between them.

The Contractor shall determine initially, by means of proper sampling and laboratory tests, that soil aggregate materials from proposed sources conform to the requirements of the Specifications. Written notice of the proposed sources of soil aggregate materials, as well as the results of the sampling and testing, shall be given to the Engineer by the Contractor after the initial determination as specified above, and not less than ten days before the time of their intended use. The Engineer may sample and test materials representative of that portion of the source intended to be used.

Approval by the Engineer of a proposed source of any aggregate materials does not constitute approval of materials delivered to the site of the Work from that source, but shall be deemed as permission to select and use materials from that source only so long as they conform to the Specifications. The Contractor shall progressively determine for itself by proper sampling and laboratory tests, while the sources are in use, that materials selected from approved sources conform to the Specifications. Should the source contain oversize material, the Engineer may require the Contractor to eliminate such oversize material.

The final and governing determination of conformance or nonconformance with the Contract Documents will be made based on sampling and testing of the materials after they have been placed according to the Contract Documents. All materials in place in the Work that do not conform to the Contract Documents shall be removed and replaced with materials that do conform thereto, or their deficiencies shall be corrected. For those materials subject to density testing, conformance shall include compliance with the density requirement. After the initial corrective action has been taken, the Engineer will take an additional sample, and if necessary, one check sample. If the materials still do not conform to the requirements of the Contract Documents after additional corrective action, the Contractor shall supply the Engineer with a gradation of the in-place material showing the size of sample, all calculations, final gradation, name of person performing the test, date, and location of sample taken. The Engineer will not perform further testing until the Contractor certifies that the rejected material has been corrected. After this certification, the Engineer will analyze one additional sample, and if this sample does not meet the Contract Documents, the material shall be removed.

The Contractor shall excavate test pits and provide such facilities as the Engineer may require to properly sample the source and shall, if the source is approved, remove any overburden that would contaminate the material intended for use on the Project. If soil aggregate materials are obtained by dredging, the Contractor shall provide safe and adequate water transportation for the Engineer to and from the dredges or other boats and shall cooperate with the Engineer in every reasonable way to expedite inspection and sampling of the materials. The cost of such work, facilities, and transportation, in connection with sampling by the Engineer at the proposed source of soil aggregate materials, and the initial and progressive sampling and testing of materials at their sources, performed by the Contractor, shall be included in the prices bid for the various Pay Items scheduled in the Proposal.

Sampling and testing of aggregates that meet the Specifications and are used in the Work will be performed without cost to the Contractor.

The cost of sampling and testing by the Engineer of soil aggregates that do not conform to the Specifications for gradation and density and the cost of sampling and testing of soil aggregates that do conform to the Specifications but are not used in the Work shall be paid to the State by the Contractor at Departmental rates. Such costs may be recovered by the State from any monies due or that may become due the Contractor. The amount that shall be paid to the State is \$300.00 per sample tested for gradation and \$200.00 per lot or sub-lot tested for density.

106.04 Certification of Compliance.

If backfilling is necessary after construction as outlined in Sections 201.03 and 201.05, the materials or assemblies, as specified, will be accepted on the basis of Certificates of Compliance stating that such materials or assemblies fully comply with the requirements of the Contract. The Engineer must approve the form of Certificates of Compliance.

Materials or assemblies, used on the basis of Certificates of Compliance, may be sampled and tested at any time. If found not to be in conformance with the Contract requirements, materials and assemblies will be rejected whether in place or not. The Contractor shall require the manufacturer or supplier to furnish four copies of Certificates of Compliance with each delivery of materials, components, and manufactured items that are acceptable by certification. One copy shall be furnished to the Resident Engineer, two copies shall be furnished to the Department Laboratory, and one copy shall be retained by the Contractor.

Certificates of Compliance shall contain the following information:

1. Project to which the material is consigned.
2. Name of the Contractor to which the material is supplied.
3. Kind of material supplied.
4. Quantity of material represented by the certificate.
5. Means of identifying the consignment, such as label marking, seal number, etc.
6. Date and method of shipment.
7. Statement that the material has been tested and found in conformity with the pertinent Contract requirements stated in the certificate.
8. Signature of a person having legal authority to bind the supplier.
9. Signature attested to by a notary public or other properly authorized person.

Payments will not be made for materials specified to be accepted on the basis of Certificates of Compliance until the Engineer has received the required Certificate of Compliance.

106.05 Plant Inspection.

The Engineer may undertake the inspection of materials at the source. Manufacturing plants may be inspected periodically for compliance with specified manufacturing methods. Material samples may be obtained for laboratory testing for compliance with materials quality requirements. Plant inspection may be the basis for the acceptability of manufactured lots as to quality.

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

1. The Engineer will have the cooperation and assistance of the Contractor and the producer with whom the Contractor contracted for materials.
2. The Engineer will have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.
3. If required by the Engineer, the Contractor shall arrange for approved office space for the use of the inspector. Such space shall be located conveniently in or near the plant.
4. Adequate safety measures shall be provided and maintained. It is understood that the Department reserves the right to retest all materials that have been tested and accepted at the source of supply after the same have been delivered and to reject all materials which, when retested, do not meet the requirements of the Contract Documents.

106.06 This Subsection is intentionally left blank.

106.07 This Subsection is intentionally left blank.

106.08 Foreign Materials.

The Contractor shall comply with the appropriate statutes and regulations concerning the use of foreign materials as follows:

1. **Wholly State-Funded Projects.** The Contractor shall comply with NJSA 52:32-1 and NJSA 52:33-1 *et. seq.*, which prohibit the use by the Contractor or subcontractors of farm products or materials produced or manufactured outside of the United States on any public work. Exceptions to this prohibition are allowed upon a finding by the Commissioner that its enforcement would be inconsistent with the public interest, or where the cost of enforcing the prohibition would be unreasonable, or where the material in question is not of a class or kind mined, produced, or manufactured in the United States in commercial quantities and of a sufficient quality. Findings by the Commissioner allowing an exception to this prohibition will be included by the Department in the Contract Documents.

If the Commissioner finds that in the performance of the Contract there has been a failure to comply with the Federal and State provisions contained in the Contract Documents relative to foreign materials, the Commissioner is to make the findings public, including therein the name of the Contractor obligated under the Contract, and no other contract for the construction, alteration, or repair of any public work in this State will be awarded to such Contractor, or to any partnership, association, or corporation with which such Contractor is associated or affiliated, within a period of three years after such finding is made public.

Where the use of foreign materials is allowed in the performance of the Contract, such materials shall be furnished according to the following requirements:

- a. Materials manufactured, produced, or mined outside the United States shall be delivered to approved locations within the State unless otherwise permitted, where they shall remain until sampling and testing can be completed.
- b. The Contractor shall, at no cost to the State, arrange for any required testing which the Department is not equipped to perform. All testing shall be performed within the State and is subject to witnessing by the Engineer.
- c. Each lot of foreign material shall be accompanied by a Certificate of Compliance prepared according to [Subsection 106.04](#). In addition, certified mill test reports shall be attached to the Certificate of Compliance for those materials for which mill test reports are required and shall clearly identify the lot to which they apply.
- d. Structural materials requiring mill tests reports will be accepted only from those foreign manufacturers who have previously established to the satisfaction of the Engineer the adequacy of their in-plant quality control to ensure delivery of uniform material in conformance with Contract requirements.

- e. Adequacy of quality control shall be established, at the option of the Engineer, by either submission of detailed written proof of adequate control, or through an in-plant inspection by the Engineer.
- f. Structural materials will not be accepted which cannot be identified with mill test reports and Certificates of Compliance.

106.09 Storage and Handling of Materials.

No materials shall be stored within 10 feet, plus the extended boom length of the largest crane on site, of overhead high voltage power lines. The high voltage power line is defined as an aerial power line having a voltage differential in excess of 750 volts between any pairs of conductors or between any conductor and ground. The Contractor shall be responsible for any power outage or de-energization associated with the Contractor's activity in the vicinity of the power lines. Private property shall not be used for storage purposes without written permission of the owner or lessee. Copies of such written permission shall be furnished to the Engineer before storage. Storage sites shall be restored to their original condition at no cost to the State.

Materials shall be handled to ensure the preservation of their quality and fitness. Aggregates shall be transported from the storage site to the Project site in tight vehicles constructed to prevent loss or segregation of materials after loading and measuring in order that there shall be no inconsistencies in the quantities of materials intended for incorporation in the Project as loaded, and the quantities actually received at the place of operations.

106.10 Unacceptable Materials.

All materials, whether in place or not, which do not conform to the requirements of the Contract Documents shall be considered as unacceptable, and such materials will be rejected and shall be removed immediately from the site of the Work unless otherwise directed. Rejected material, the defects of which have been corrected, shall not be used until approval has been given.

106.11 This Subsection is intentionally left blank.

106.12 Substitutes or "Or Equal" Items.

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted if sufficient information is submitted by the Contractor to allow the Engineer to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material or equipment will not be accepted from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make written application to the Engineer for approval thereof, certifying that the proposed substitute performs adequately the functions and achieves the results called for by the general design, is similar and of equal substance to that specified, and is suited to the same use as that specified. The application shall state that the evaluation and approval of the proposed substitute does not prejudice the Contractor's achievement of Completion on time. It shall also state whether or not approval of the proposed substitute for use in the Work requires a change in any of the Contract Documents (or in the provisions of any other direct Contract with the State for Work on the Project) to adapt the design to the proposed substitute, and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application, and available maintenance, repair, and replacement service shall be indicated. The application shall also contain an itemized estimate of all costs that result directly or indirectly from approval of such substitute, including costs of redesign, all of which will be considered in evaluating the proposed substitute. The Engineer may require the Contractor to furnish additional data about the proposed substitute.

If a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents, the Contractor may furnish or use a substitute means, method, technique, sequence, or procedure of construction which is acceptable, if the Contractor submits sufficient information to allow the Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the Engineer is to be similar to that described in the previous paragraph.

The Engineer is to be allowed a reasonable time within which to evaluate each proposed substitute. The Engineer will be the sole judge of acceptability, and no substitute shall be ordered, installed, or used without either a Construction Order or an approved working drawing. If approval is given, it is on the condition that the Contractor is fully responsible for producing Work in conformity with Contract requirements. If, after trial use of the substituted materials, equipment,

means, method, technique, sequence, or procedure of construction, the Engineer determines that the Work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute and shall complete the remaining Work with the specified materials, equipment, means, method, technique, sequence, or procedure of construction. The Contractor shall remove the deficient Work and replace it as specified, or take such other corrective action as the Engineer may direct. Changes will not be made in the basis of payment for the Pay Items involved, nor in the Contract Time as a result of authorized substitutes. The Engineer may require the Contractor to furnish at no cost to the State a special performance guarantee or other surety with respect to any substitute. The Engineer will document the time required by the Department in evaluating proposed substitutions and in making changes in the Contract Documents. When the Engineer determines that a proposed substitute is unacceptable, the Contractor shall reimburse the Department for the cost of evaluating each proposed substitute.

When the Contract Documents permit the use of more than one type of material, equipment, or product, only one type is to be used throughout the Project.

106.13 This Subsection is intentionally left blank.

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.01 Legal Jurisdiction.

- 1. Applicable Law.** This Contract shall be construed and shall be governed according to the Constitution and laws of this State.
- 2. Sovereign Immunity.** The State by entering into this Contract does not waive its Sovereign Immunity, except as provided by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 *et seq.* The rights or benefits provided the Contractor in this Contract which exceed those provided under the Act are contractual in nature and shall not be deemed to expand the waiver of Sovereign Immunity as set forth in that Act.
- 3. Litigation of Claims by Contractor.** The Contractual Claims Resolution Process is not an administrative procedure but is contractual in nature, intended to review properly filed and documented claims. Pursuant to N.J.C.A. 16:45-1.3, exhaustion of the Claims Resolution Process as set forth under the Specifications is not a prerequisite to the filing of a legal action against the Department or State. The Contractor, however, must fully comply with all of the terms and conditions of the Contractual Liability Act, N.J.S.A. 59:13-1 *et seq.* prior to commencing a legal action. Therefore, where a Contractor brings a legal action, arising out of a Contract, against the Department or State or any officials or employees, thereof, arising out of or related, directly or indirectly, to a claim pending against the Department; the Contractual Claims Resolution Process, at any step, shall terminate as to that claim(s) or related claims being litigated, no matter which level of review the claim may be at when the legal action is filed. Furthermore, once the Contractor files a legal action any claim(s), related to that legal action will no longer qualify to be reviewed by the Claims Committee or to have the same claim(s) resolved under the Non-Binding Mediation Procedure or at any other Level of review. Such claim(s) will, thereafter, be resolved under the legal action subject to the provisions of the Contractual Liability Act, N.J.S.A. 59:13-1 *et seq.* unless and until the legal action is dismissed with or without prejudice. The Contractor may submit to the Department for processing through the various steps of the Contractual Claims Resolution Process any claims that are unrelated to the pending litigation subject to the terms of the Specifications and the Contractual Liability Act N.J.S.A. 59:13-1 *et seq.*
- 4. Completion of the Contract.** The Completion of the Contract shall control as to any issue that may arise regarding the particular point in time when a Contractor may be barred from recovering against the State as provided under N.J.S.A. 59:13-5 *et seq.* The Contractual Claims Resolution Process and the various steps thereof may continue beyond the Completion of the Contract; however, the Contractual Claims Resolution Process will not in any manner, expressed or implied, extend any statute of limitation that may apply as to a claim. The Contractor by entering into the Contract with the Department agrees no further notice to the Contractor regarding the provisions stated in this Section are required. The Contractor also agrees to be responsible for compliance with all statutes of limitation and compliance with the various provisions of the Contractual Liability Act, N.J.S.A. 59:13-1 *et seq.*
- 5. Subcontractor(s).** Pursuant to Subsection 108.02, the Department will not process or review any claims submitted by a subcontractor(s) or supplier(s) at any tier. All claims submitted by the Contractor must be an obligation or liability of the Contractor and cannot be merely a pass through of a claim by a subcontractor or by a supplier.

107.02 Notice of Claim and the Contractual Claim Resolution Process.

1. Notice.

- a. **Obligations.** The various notice provisions set forth in this Contract are contractual obligations assumed by the Contractor by the act of executing the Contract. The Contractor shall be responsible to notify the Department in writing within the time frame as may be mandated in an applicable Subsection of the Specifications as well as within 90 days of any situation or occurrence which may potentially result in or be the basis of a belief that additional compensation or an extension of time is due from the State, except where permission to file a “late notice of claim” has been obtained by the Contractor from the Superior Court in accordance with N.J.S.A. 59:13-6. The Department is not authorized to expand, reduce or waive either the contractual or statutory time limitations within which a notice of claim is to be filed with the Department. Any required notice shall be given only on the Contractual Notice Form provided by the Department. Submission of a Contractual Notice Form is required in order to comply with the notice requirements of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-5 *et seq.*, provided such notices are given within the time limits established by that Act. The Contractor, by executing the Contract, agrees that the only evidence of compliance with the notice provisions of the Contractual Liability Act, N.J.S.A. 59:13-5 *et seq.*, and the Specifications shall be the filing of a fully completed (except that the amount of the claim need not be stated when unknown) Contractual Notice Form with the Department, and that no other documents sent or delivered to the Department or any of its officers or employees shall satisfy the statutory and/or contractual notice requirements.
- b. **Time.** The Contractor, by the act of executing the Contract, acknowledges that it will be forever barred from recovering against the State if it fails to give timely notice in accordance with N.J.S.A. 59:13-5 *et seq.*, on the Contractual Notice Form required under this Subsection of any happening of an event, thing, or occurrence or of an act or failure to act, by the Department and that the Contractor is solely responsible for complying with the various notice requirements and the timeliness of a claim as set forth under the Contractual Liability Act, N.J.S.A. 59:13-5 *et seq.* and the Specifications.
- c. **Notice Form.** The Contractual Notice Form shall be completed in its entirety for each and every claim and shall be signed by an authorized representative of the Contractor. Any Contractual Notice Form filed which does not provide all of the minimum information listed in this Subsection will be considered incomplete for the purpose of processing the claim under the Contractual Claim Resolution Process and no formal discussions or meetings concerning a claim filed on an incomplete Form will take place. A Contractual Notice Form which identifies the amount of the claim as being unknown may be considered by the Department as only satisfying the notice requirements as set forth under the Contractual Liability Act, N.J.S.A. 59:13-5 *et seq.*, as long as the notice of claim is timely filed and provides all of the other minimum information on or attached to a properly executed Contractual Notice Form. However, for any claim requesting Additional Compensation, it shall not be sufficient to begin the Claim Resolution Process until the exact amount is provided according to 3.j. below. The Contractor’s act of executing the Contract shall be construed to be an acknowledgment by the Contractor that it understands that the processing of a claim by the Department at any step of the Contractual Claims Resolution Process shall not constitute a waiver by the State of any defense that a claim was filed out of time and is thereby barred under the terms of the Contractual Liability Act or of any defense that there is no merit to the “claim being asserted by the Contractor”.

2. Steps of Review.

The Contractual Claim Resolution Process is sequential in nature and is composed of the following steps:

- Step I: Review by the Resident Engineer;
- Step II: Review by the Regional Dispute Board;
- Step III: Review by the Department Claims Committee;
- Step IV: Non-Binding Mediation.

Processing through the steps is subject to the following conditions:

- a. No claim will be accorded a particular level of review unless and until the claim has been reviewed at the preceding step. Additionally, there will be no further review of the claim, unless and until the Contractor provides, in writing, that the decision of a review step within the specified timeframe is unacceptable and further requests that the claim be forwarded to the next step. Absent the written submittal of this information the claim will be considered withdrawn from the Contractual Claim Resolution Process. If at any step in the process, a claim is resolved, the Contractor must sign an unconditional release, furnished by the Department, as to any and all matters arising from the claim.

- b. In order to begin the Contractual Claim Resolution Process the Contractor must state in writing that all documentation in support of the claim, as required under this Subsection, has been provided to the Department as part of or attached to the contractually required Contractual Notice Form and that the Contractor has requested that the review process, as outlined above, begin. The Resident Engineer will take no formal action until this notification is received and the Resident Engineer independently determines that the Contractor has in fact satisfied the requirements of this Subsection. If the documentation submitted by the Contractor is determined to be incomplete, the Resident Engineer will notify the Contractor that the review process cannot begin and include a list of missing components required to start the process. When the additional material is submitted, the Contractor is required to again notify the Resident Engineer in writing that all documentation in support of the claim has been provided and the Contractual Claim Resolution Process should begin. The Contractor shall be limited to the documentation provided to the Resident Engineer at the beginning of Step I, in support of a claim, throughout all steps of the Claim Resolution Process. The submission of additional information by the Contractor at any step beyond Step I, shall be cause for the claim to revert back to Step I for review at each and every Step. The Resident Engineer will provide written notice to the Contractor when Step I was begun.
 - c. When the value of the claim submitted by the Contractor is \$20,000 or less, the Step II review will be the final step in the Contractual Claim Resolution Process. In such a case, the decision of the Regional Dispute Board will be final and there will be no further contractual review.
 - d. Where there has been a determination, at both Step I and Step II, that the specifications do not provide a contractual basis for the resolution of the claim submitted by the Contractor or that the Notice of Claim was filed late without obtaining permission of the Superior Court, the Department reserves the right to conclude the Contractual Claim Resolution Process at the end of the Step II review. In such instance, the Secretary of the Department Claims Committee will provide the Contractor with the reason(s) for the no further review determination and rejection of the claim. However, where the Claims Committee does review a claim, there shall not be deemed a waiver by the Department of any defense that the Notice was filed late or that there does not exist a contractual basis for resolution.
- 3. Information Required.** As a minimum, all of the following information must accompany each claim and be incorporated into or attached to the contractually required Contractual Notice Form:
- a. A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected by the claim.
 - b. The date on which facts arose that gave rise to the claim.
 - c. A copy of any notice given to the Department pursuant to any other Subsection of the Contract which relates to the matter giving rise to the claim.
 - d. The name, function, and activity of each State individual, official, or employee involved in or knowledgeable about the claim.
 - e. The specific provisions of the Contract which support or mitigate against the claim and a statement of the reasons why such provisions support or mitigate against the claim.
 - f. If the claim relates to a decision of the Department which the Contract leaves to the Department's discretion or as to which the Contract provides that the Department's decision is final, the Contractor shall set out in detail all facts supporting its contention that the decision of the Department was fraudulent, arbitrary or capricious.
 - g. The identification of any documents and the substance of any oral communications relating to such claim attaching same to the Form.
 - h. A statement as to whether the additional compensation or extension of contract time sought is based on the operation of the provisions of the Contract or an alleged breach of contract.
 - i. If an extension of contract time is sought, the specific days sought and the basis for such claim, supported by the Contractor's approved baseline progress schedule and updates, as well as a fragment, which will include a time impact evaluation, depicting the delay according to Subsection 108.04.
 - j. If additional compensation is sought, the exact amount sought and a breakdown of that amount into the following categories:
 - (1) Direct Labor
 - (2) Direct Materials
 - (3) Direct Overhead as specified in Subsections 109.03 and 109.04.
 - (4) Subcontractor's Work
 - (5) Other categories as specified by the Contractor.

(6) The basis and manner of the Contractor's calculations of the additional compensation claimed.

The Department will not determine liability separate and apart from damages. The Contractual Claims Resolution Process shall not be bifurcated. The Department shall review liability and damage valuation issues at the same time.

4. The Procedures for the Process.

a. Step I, Resident Engineer Review. The Resident Engineer will render a written decision regarding the claim presented within 30 State Business Days of the Resident Engineer's determination that the information provided by the Contractor on the Contractual Notice Form in support of the claim satisfied the requirements to begin Step I. This time limit may be extended by mutual agreement of the parties. Within 15 State Business Days of the receipt of the decision by the Resident Engineer, the Contractor shall either accept or reject the decision in writing; or upon failure to complete this, the claim will be considered withdrawn from the Contractual Claim Resolution Process and there will be no further review of the claim. If the Contractor accepts the decision, such acceptance shall include execution of an unconditional release furnished by the Department effective upon payment.

b. Step II, Regional Dispute Board Review. If the Contractor provides a written rejection of the Resident Engineer's decision and a request to forward the claim to Step II, the Resident Engineer will forward the claim and supporting information previously submitted by the Contractor to the Regional Dispute Board within five State Business Days. The Regional Dispute Board will schedule and hold a meeting to review the claim with the Contractor within 30 State Business Days of receipt of the said claim information from the Resident Engineer. This time limit may be extended by mutual agreement of the parties. The Regional Dispute Board will issue a written decision regarding the claim within 20 State Business Days of the meeting.

Within 15 State Business Days of receipt of the Regional Dispute Board decision, the Contractor shall either accept or reject it in writing; or upon failure to complete this, the claim will be considered withdrawn and the Contractual Claim Resolution Process shall be considered to be concluded for that particular claim. If the Contractor accepts the decision, such acceptance shall include execution of an unconditional release furnished by the Department effective upon payment.

The Director, Construction Services and Materials, may request an informal meeting with the Contractor to discuss the then pending claim(s) after the Step II decision has been issued and sent to the Contractor, but prior to the matter being reviewed at the next step, subject to the mutual consent of the Contractor and the Department.

c. Step III, Claims Committee Review. A written request for a Step III review of the claim is to be made to the Secretary of the Department Claims Committee, P.O. Box 600, Trenton, New Jersey 08625-0600 with a copy to the Director, Construction Services & Materials. The Contractor may request that the Department Claims Committee immediately review claims, which are unresolved after review by the Regional Dispute Board, when the following conditions are met:

1. A claim or the combination of claims exceed \$250,000; or
2. It is mutually agreed to by the Contractor and the Department.

However, when a project becomes 75 percent complete by contract time or dollar amount, which ever first occurs, claims that are unresolved at Step II will be reviewed at a single session of the Department Claims Committee after the Completion of the Work.

Additionally, the Contractor may request at the time of issuance of the Final Certificate that all unresolved claims, with the exception of the exclusionary cases as provided for in this Subsection, that have gone through the Steps I and II of the Contractual Claim Resolution Process, and which have not been presented at Step III of the Contractual Claim Resolution Process, be reviewed by the Department Claims Committee as provided for in this Subsection. The Contractor's written request must accompany its exceptions to the Final Certificate, with a copy sent to the Secretary of the Department Claims Committee and shall be made no later than 30 State Business Days after the issuance of the Final Certificate.

The Secretary of the Department Claims Committee will schedule a Claims Committee meeting with representatives of the Contractor and the Region, to be held within 45 State Business Days of the receipt of the claim information. This time limit may be extended by mutual agreement of the parties. The Department Claims Committee will notify the Contractor in writing of its decision on the claim(s) within 45 State Business Days of the meeting, stipulating the terms of any resolution of the claims. If the Department Claims Committee determines after review of the claims that no resolution and no further payment is warranted, it shall notify the Contractor in writing of its decision. Within 15 State

Business Days of the receipt of the Department Claims Committee decision, the Contractor shall either accept or reject it in writing, or upon failure to complete this, the claim will be considered withdrawn and the Contractual Claim Resolution Process shall be considered to be concluded for that particular claim. If the Contractor accepts the decision, such acceptance shall include execution of an unconditional release furnished by the Department effective upon payment. If the Contractor rejects the decision, there will be no further review of the claim unless the Contractor submits a written request for the utilization of Non-Binding Mediation.

d. Step IV, Non-Binding Mediation.

(1) **Conditions.** The Contractor may request at any time during the Project, but no later than 30 State Business Days after issuance of the Final Certificate, that any claim unresolved by the Department Claims Committee be elevated to Step IV. The request must be in writing to the Secretary, Department Claims Committee, P.O. Box 600, Trenton, New Jersey 08625-0600. No claim will be elevated to Step IV unless all of the following conditions are satisfied:

- (a.) The claim has been reviewed by the Department Claims Committee.
- (b.) The Contractor has escrowed its bid preparation documents as required under Subsection 103.06 and the documents are still being held in escrow.
- (c.) The Contractor has entered into a Non-Evidential agreement to the effect that any statement or information provided during the Non-Binding Mediation proceedings shall not be evidential in any legal proceeding unless obtained by other discoverable means.
- (d.) The Contractor has entered into a cost sharing agreement to equally share the cost of using Non-Binding Mediation in accord with Department issued forms.
- (e.) The utilization of Non-Binding Mediation has been mutually agreed to by the Department and the Contractor; and
- (f.) Prior to the commencement of the Non-Binding Mediation the parties shall confer with one another for the purpose of resolving the format of presenting the claim summary, supporting information, opening statements, and responses.

Failure by the Contractor to request Non-Binding Mediation within the required time period shall constitute a waiver by the Contractor of any utilization of the Non-Binding Mediation Step.

(2) **Forms.** Where the Contractor requests that Non-Binding Mediation be conducted, the Department will forward to the Contractor the required Non-Evidential and cost sharing agreement forms which shall be executed by the Contractor and returned to the Department within ten State Business Days. The failure by the Contractor to return the fully executed Non-Evidential and cost sharing agreements to the Department within the ten-day period shall constitute a waiver by the Contractor of the availability of Step IV.

(3) **Mediator.** The Department will select the Mediator to be utilized for the Non-Binding Mediation from a list of candidates submitted by the Contractor. The Contractor shall submit the names of six proposed Mediators, along with a biographical background listing the experience and qualifications of each candidate. Candidates may be from the same employment category or disciplines, such as construction, mediation, partnering facilitation, consulting engineer, attorney, judiciary (retired), accountant, architect, etc.

A candidate may have been used for mediation purposes for this Project or another project but shall not have any other relationships with either the Department or the Contractor for a period of two years preceding the request for Step IV. If the Department determines that none of the candidates submitted are acceptable, the Department will request and the Contractor shall submit four additional Mediator candidates. The Contractor shall submit this additional list within five State Business Days of the receipt of the written request. Upon mutual agreement, the Mediator can be an individual proposed by the Department.

(4) **Escrow Documents.** Once the Contractor has fully executed the required Non-Evidential and cost sharing agreements, its escrowed bid documents will be released upon request of the Department Claims Committee Chairperson solely for the exclusive use of the Mediator, the Department's selected Negotiator(s), the Department Regional Representative(s) and the Contractor Representative(s) participating in the Mediation session. These documents will be used by the Department as part of the Contractual Claims Resolution Process only to resolve the pending claims except it may seek such documents through the discovery process in the event mediation is not successful and litigation ensues.

- (5) **Meeting.** The Secretary of the Department Claims Committee will schedule a meeting for the Non-Binding Mediation of the submitted claims to be held within 30 State Business Days of the return of the executed Non-Evidential and cost sharing agreements. The meeting time limit may be extended by mutual agreement of the parties. The Secretary of the Department Claims Committee will issue the recommendations of the Department's Negotiator to the Commissioner for action within 15 State Business Days of the Non Binding Mediation session. The Commissioner, or their designee, will accept, reject, or modify the recommendation of the Department Negotiator and notify the Contractor of the decision within 15 State Business Days.
- (6) **Decision.** The Contractor shall accept or reject the decision within 15 State Business Days of notification of the Commissioner's decision. If the Contractor accepts the decision of the Commissioner, or their designee, such acceptance shall be in writing and include execution of an unconditional release furnished by the Department effective upon payment. If the Contractor fails to accept or reject the Commissioner's decision within 15 State Business Days, the decision of the Commissioner will be withdrawn and the Contractual Claims Resolution Process shall be deemed concluded as to that particular claim under review.

After submission of the recommendation to the Commissioner, the bid documents released from escrow will be returned to the escrow agent for continued escrow in the designated repository.

107.03 Laws to be Observed.

The Contractor shall keep fully informed of all Federal, State, and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The Contractor shall at all times observe and comply with, and shall cause its agents and employees to observe and comply with, all such laws, ordinances, regulations, orders, and decrees and shall protect and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or the Contractor's agents or employees, subcontractors of any tier, suppliers, or materialmen. If any discrepancy or inconsistency is discovered between the Contract Documents and any such law, ordinance, regulation, order, or decree, the Contractor shall immediately report the same to the Engineer in writing.

107.04 This Subsection is intentionally left blank.

107.05 Permits, Licenses, and Taxes.

The Contractor shall procure all permits, grants, and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work except where the Department has procured such permits, grants, or licenses for temporary or permanent construction. The Contractor shall advise the issuing agency or party of its proposed operations and obtain their cooperation and such supplemental permission as may be necessary. Before submitting its bid, the Contractor should obtain from the Department all available information on the permits, grants, and licenses the Department has obtained. Charges incurred by the Contractor for permits, grants, and licenses in connection with the Work shall be paid by the Contractor and shall be included in the prices bid for the various Pay Items scheduled in the Proposal.

Since this environmental dredging pilot is conducted as part of the Lower Passaic River Restoration Project, Remedial Investigation/Feasibility Study (RI/FS) in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, Superfund), the permit process has been modified. A Federal Consistency Determination/Water Quality Certification will be issued by the New Jersey Department of Environmental Protection as per Section 307 of the federal Coastal Zone Management Act (16 USC 1451 et seq.) and Section 401 of the federal Clean Water Act (33 USC 1251 et seq.). The Department, USACE and USEPA will submit the request as part of the Lower Passaic River Restoration Feasibility Study in accordance with CERCLA. Such permits shall be provided to the Contractor prior to initiation of construction.

No permit is required from the Army Corps of Engineers since the work is being conducted under the authority of CERCLA.

Before submitting a bid based on utilizing hydraulically procured soil aggregate materials, bidders shall assure themselves that the NJDEP will issue a permit to dredge such materials.

NJSA 54:32B-9 provides that any sale or service to the State, or any of its agencies, instrumentalities, public authorities, public corporations (including a public corporation created pursuant to agreement or compact with another state), or political subdivisions where the State is the purchaser, user, or consumer, is not subject to the sales and use

taxes imposed under the Sales and Use Tax Act. NJSA 54:32B-8 provides that sales of materials, supplies, or services made to contractors, subcontractors, or repairmen for exclusive use in erecting structures, or building on, or otherwise improving, altering, or repairing real property of the above listed bodies are exempt from the tax on retail sales imposed by the Sales and Use Tax Act. The sales tax exemption does not apply for equipment used for Contract work or for force account work whether the equipment is to be purchased or rented. The exemption provided under NJSA 54:32B-8 is conditioned on the person seeking such exemption qualifying therefore pursuant to the rules and regulations and upon the forms prescribed by the New Jersey Division of Taxation. The required form, "Contractor's Exemption Purchase Certificate" (Form No. ST-13), can be obtained by writing or calling the New Jersey Division of Taxation, Tax Information Services (TIS), P.O. Box 269, Trenton, New Jersey 08625, or any New Jersey Division of Taxation Regional Office.

Pursuant to PL 1995, c.159, and notwithstanding any provisions of the law to the contrary, whenever any taxpayer, partnership, or S corporation under contract to provide goods or services or construction projects to the State or its agencies or instrumentalities, including the legislative and judicial branches of the State government, is entitled to payment for those goods or services at the same time a taxpayer, partner, or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation will seek to set off so much of that payment as is necessary to satisfy the indebtedness. The amount set off shall not allow for the deduction of any expense or other deductions that might be attributable to the taxpayer, partner, or shareholder subject to set-off under this act.

The Director of the Division of Taxation will give notice of the set-off to the taxpayer, partner, or shareholder and will provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No request for conference, protest, or subsequent appeal to the tax court from any protest shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to PL 1987, c.184 (C.52:32-32 *et seq.*), to the taxpayer shall be stayed.

107.06 Patented Devices, Materials, and Processes.

If any design, device, material, or process covered by letters of patent or copyright is used in the Work, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the Work. The Contractor shall defend, indemnify, and save harmless the State, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material, or process, or any trademark or copyright, and shall indemnify the State for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the performance of the Work or after Acceptance.

107.07 Discrimination in Employment on Public Works.

Pursuant to NJSA 10:2-1, the Contractor agrees that:

1. In the hiring of persons for the performance of work under the Contract or any subcontract hereunder, or for the procurement, manufacture, assembling, or furnishing of any such materials, equipment, supplies, or services to be acquired under the Contract, the Contractor, subcontractor, or any person acting on behalf of such Contractor or subcontractor shall not by reason of race, creed, color, national origin, ancestry, marital status, disability, or sex, discriminate against any person who is qualified and available to perform the Work to which the employment relates;
2. The Contractor, subcontractor, or any person acting on behalf of such Contractor shall not, in any manner, discriminate against or intimidate any employee engaged in the performance of Work under the Contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling, or furnishing of any such materials, equipment, supplies, or services to be acquired under such Contract, on account of race, creed, color, national origin, ancestry, marital status, disability, or sex;
3. There may be deducted from any monies due the Contractor under the Contract, a penalty of \$50.00 for each person for each Calendar Day during which such person is discriminated against or intimidated in violation of the provisions of the Contract; and
4. The Contract may be canceled or terminated by the Department, and any monies due the Contractor under the Contract may be forfeited, for any violation of this Subsection occurring after notice to the Contractor from the Department of any prior violation of this Subsection.

107.08 Affirmative Action and Minority or Disadvantaged Business Enterprises or Emerging Small Business Enterprise.

It is the public policy of the State and of the United States that no individual, group, firm, or corporation working on or seeking to work on a Public Works Project should be discriminated against on the basis of age, race, creed, color, national origin, ancestry, marital status, disability, or sex. To this end, Affirmative Action and Minority or Disadvantaged Business Enterprise or Emerging Small Business Enterprise Programs have been developed. The Affirmative Action and Minority or Disadvantaged Business Enterprise or Emerging Small Business Enterprise regulations and requirements applicable to the Contract are contained in the Specifications for the Project. Any conflicts between these regulations and requirements, and the other provisions of the Contract Documents shall be resolved by the Engineer to further the above stated public policy.

107.09 This Subsection is intentionally left blank.

107.10 Sanitary, Health, and Safety Provisions.

A. Toilets. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees and for the Department’s use, as may be necessary to comply with the requirements of the State and local health departments, or of other bodies or tribunals having jurisdiction. In determining the minimum number of facilities, the Contractor shall assume up to fifteen users.

The total number of facilities shall be determined from the chart listed below. A facility is defined as one unit. The facilities shall be on the same vessel as the employees.

All toilet facilities shall be in compliance with OSHA Regulation 1926.51(c). The sewage disposal method shall not endanger the health of employees and shall be in compliance with all State and Federal regulations.

Number of Users	Minimum No. of Facilities
1 - 15	1
16 - 35	2
36 - 55	3
56 - 80	4
81 - 110	5
111 - 150	6
Over 150	6+(1)

(1) - One additional facility for each additional 40 employees.

B. Health and Safety Plan. The Contractor shall observe all rules and regulations of the Federal, State, and local health officials. Attention is directed to Federal, State, and local laws, rules, and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous to the worker’s health or safety.

Within ten State Business Days of the Notice to Proceed, the Contractor shall submit to the Engineer a written Health and Safety Plan (hereinafter referred to as the “HASP”). The HASP shall meet or exceed the minimum requirements of this Subsection and any applicable State or Federal regulations. The general introduction of the HASP shall include the names, addresses, and telephone numbers of the Contractor’s Project Manager, project superintendent and its designee, all competent persons, and the traffic control coordinator.

The Contractor’s HASP shall include the following:

1. General Introduction.

a. Description. The HASP shall describe in detail the means by which the Contractor shall implement and monitor the HASP. Implementation and monitoring shall also mean that the HASP shall be a document with provision for change to update the HASP with new information, new practices or procedures, changing site and environmental conditions, or other situations that could adversely affect site personnel. The HASP shall provide guidelines for protecting all personnel from hazards associated with Project operations and activities. The HASP shall establish the policies and procedures that are necessary

for the Project to be in compliance with the requirements of OSHA and other State and Federal regulatory agencies with jurisdiction, rules, regulations, standards, or guidelines in effect at the time the Work is in progress.

- b. Responsibility, Identification of Personnel, and Certifications.** The Contractor is solely responsible for creating, implementing, and monitoring the HASP.

The Contractor shall identify and designate on-site supervisory level personnel who shall be responsible for implementing and monitoring the HASP at all times throughout the duration of the Project and shall have authority to take prompt corrective measures to eliminate hazards including the ability to stop work activities.

Documentation of training provided to the on-site supervisory level personnel shall be included as part of the HASP.

For any work activities wherein the Contractor has identified a competent person as defined by OSHA, that person shall be capable of identifying existing and predictable hazards and have the authority to take prompt corrective measures to eliminate the hazards, including the ability to stop work activities.

Documentation of the qualifications of such competent persons identified, including any certifications received, shall be included as part of the HASP.

The Contractor shall further identify the qualified safety professional responsible for developing the HASP and shall provide that person's qualifications for developing the HASP which shall include, but not be limited to, education, training, certifications, and experience in developing this type of HASP.

The HASP shall contain a certification executed by the qualified safety professional who developed the HASP, stating that the HASP complies with OSHA and other applicable State and Federal regulatory agencies with jurisdiction, rules, regulations, standards, or guidelines in effect at the time the Work is in progress.

- 2. Elements of the HASP.** The HASP shall address, but not be limited to, the following elements:

- a. Management safety policy and implementation statement.**

- b. Emergency telephone numbers.**

- c. Personnel responsibilities.**

- (1) Management responsibilities
- (2) Supervisor's responsibilities
- (3) Site safety officer responsibilities
- (4) Employee responsibilities

- d. Training.**

- (1) Regulatory: copies of 40-hour, 24-hour, supervised field activities, 8-hour supervisors, and 8-hour refresher training certificates
- (2) Crew/site talks
 - (a) Subject selection
 - (b) Documentation
- (3) Site hazard assessment -Daily employee awareness of site operations

- e. Safety rules.**

- (1) General safety rules
- (2) Personal protective equipment
- (3) Housekeeping

- f. Employee disciplinary policy.**

- (1) The policy
- (2) Violation forms

- g. Safety checklists.**

- (1) Project safety-planning checklist
- (2) Emergency plans and procedures checklist
- (3) Documentation checklist
- (4) Protective materials and equipment checklist

- h. Record keeping.**

- (1) OSHA 200 log
- (2) New Jersey Department of Labor L&I-1 forms
- (3) Medical surveillance and clearance certificates

- i. Emergency action plans, chain of command, and responsibilities.**
 - (1) Guideline for handling emergencies
 - (2) Accidents involving death or serious injury
 - (3) Property damage accidents
 - (4) Fire or explosions
 - (5) Severe weather
- j. Site control measures.**
 - (1) Job site security guidelines for safety
 - (2) Contaminant control
 - (3) Delineation of hot, cold, decontamination and support zones
 - (4) Escape routes
- k. Hazard communication.**
 - (1) Where health and safety information are located
 - (2) How health and safety information is communicated
 - (3) Person responsible for communicating health and safety information
 - (4) Documentation of hazard communication
- l. Additional procedures for project specific situations as applicable.**
 - (1) Dredging equipment
 - (2) Contamination hazard assessment
 - (3) Electrical
 - (4) Equipment operators
 - (5) Fall protection
 - (6) Hand and power tools
 - (7) Hearing conservation
 - (8) Lock out/tag out
 - (9) Materials handling, storage, use, and disposal
 - (10) Night work
 - (11) Personal protective equipment
 - (12) Project entry and exit
 - (17) Respiratory protection
 - (13) Sanitation
 - (14) Signs, signals, and barricades
 - (15) Subcontractors
 - (17) 16Air monitoringPersonnel monitoring
 - (18) Environmental sampling techniques and instrumentation, including equipment maintenance and calibration
 - (19) Decontamination procedures
 - (20) Spill containment

The scope of work, operations, and environment of the Project will dictate the elements that need to be addressed by the Contractor and may add or delete elements that are to be addressed for a particular project.

Appropriate documentation for each element shall be maintained and made available by the Contractor to show compliance with the HASP.

The HASP shall be kept on the site and shall apply and be available to all workers and all other authorized persons entering the work site.

The HASP shall apply to any work under the Contract whether such work is performed, by way of example and not limitation, by the Contractor's forces, subcontractors, suppliers, or fabricators.

The HASP shall be submitted to the Engineer for review before within ten State Business Days of Notice to Proceed. Within ten Working Days of receipt, the Engineer will determine whether or not the HASP meets the requirements of this Subsection. If the HASP does not, it will be returned for revision, and work on the Project may not proceed until the Engineer has accepted the HASP. Acceptance of the HASP shall not be considered or be construed as an approval of the HASP by the Engineer and shall not be considered a part of the Contract and shall not obligate the State to carry out the HASP in any manner. Copies of updates to the HASP shall be supplied to the Engineer.

If at any time during the Project, the HASP is not being complied with as written, the Contractor shall correct such deficiencies.

The Contractor is solely responsible for all aspects of the HASP including, but not limited to, the development, revision, implementation, monitoring, and updating of the HASP. Pursuant to [Subsection 107.22](#), the Contractor shall defend, indemnify, and save harmless the State from any and all liability from any actions arising directly or indirectly or alleged to arise from the HASP.

A copy of each State Department of Labor form, L&I-1, entitled "Employer's First Report of Accidental Injury or Occupational Illness," submitted to the Department of Labor, Division of Workers Compensation, shall be sent to the Office of Capital Project Safety, New Jersey Department of Transportation, 1035 Parkway Avenue, P.O. Box 600, Trenton, New Jersey 08625-0600.

Separate payment will not be made for the HASP including, but not limited to, its development, revision, implementation, monitoring, and updating. All costs thereof shall be included in the various Pay Items scheduled in the Proposal.

The Contractor shall admit, without delay and without the presentation of an inspection warrant, any inspector of OSHA or other legally responsible agency involved in safety and health administration upon presentation of proper credentials.

The Contractor shall make available to the Contractor's employees, subcontractors, the Engineer, and the public, all information pursuant to OSHA 29 CFR Part 1926.59 of The Hazard Communication Standard 29 CFR 1910.1200, and shall also maintain a file on each job site containing all MSDS for products in use at the Project. These MSDS shall be made available to the Engineer upon request.

107.11 Public Convenience and Safety.

Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of applicable laws, OSHA regulations, building and construction codes, and the rules and regulations of the New Jersey Department of Labor shall be observed.

107.12 Railway Highway Provisions.

107.13 Construction Over or Adjacent to Navigable Waters.

All Work over, on, or adjacent to navigable waters shall be so conducted that free navigation of the waterways is not interfered with, and that the existing navigable depths are not impaired except as allowed by the Federal Consistency Water Quality Certificate issued by NJDEP. Vessel traffic in the work area is minimal, with the occasional passage of private vessels and some barge traffic.

107.14 Barricades and Warning Signs.

The Contractor shall provide, erect, and maintain all buoys, markers, necessary barricades, suitable and sufficient lights, danger signals, signs, and other traffic control devices. and shall take all necessary precautions for the protection of the Work and safety of the public. Lights must conform to USCG requirements for all plants, ranges, markers, buoys or other equipment installed or being used to perform the Work, even when not in use.

107.15 This Subsection is intentionally left blank.

107.16 Protection and Restoration of Property Markers and Land Monuments.

The Contractor shall be responsible for the preservation of all public and private property markers and shall protect carefully from disturbance or damage, all land monuments and property markers until the Contractor's Land Surveyor has referenced their location. Monuments and markers that have been set by governmental and public agencies, shall be moved as directed once the Contractor's Land Surveyor has performed all survey work related to the movement of the aforementioned monuments and markers. If the Engineer discovers any errors in the survey, the cost of checking and correcting these errors will be deducted from any monies due or that may become due the Contractor.

All Geodetic Control Markers such as monuments, disks, and benchmarks within the Project site shall be carefully protected and shall not be disturbed by construction activity. Where such markers are located within the Project and are in danger of destruction or disturbance, the Contractor shall cause its Land Surveyor to properly and accurately relocate all such affected markers before disturbing the location of the original markers. All survey work shall be according to the Geodetic Mark Preservation Guidebook as prepared by National Geodetic Survey. Copies of the guidebook are available from the Geodetic Control Survey Unit, New Jersey Department of Transportation, PO BOX 600, Trenton, New Jersey 08625. The Contractor shall certify in writing to the Geodetic Control Survey Unit that all the survey work was performed according to this guidebook.

107.17 This Subsection is intentionally left blank. Forest Protection.

107.18 This Subsection is intentionally left blank.

107.19 Independent Contractor.

The relationship of the Contractor to the State is that of an independent contractor, and said Contractor, according to its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it shall neither hold itself out as nor claim to be an officer or employee of the State by reason hereof. The Contractor shall not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, workers compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

107.20 Third Party Beneficiary Clause.

It is specifically agreed between the parties executing the Contract that no provision of the Contract is intended to make the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

It is the further intent of the Commissioner and the Contractor in executing the Contract that no individual, firm, corporation, or any combination thereof, that supplies materials, labor, services, or equipment to the Contractor for the performance of the Work becomes thereby a third party beneficiary of the Contract. The Commissioner and the Contractor understand that such individual, firm, corporation, or combination thereof, has no right to bring an action in the courts of this State against the State, by virtue of this lack of standing, and also by virtue of the provisions of the New Jersey Contractual Liability Act, NJSA 59:13-1 *et seq.*, which allows suit against the State in Contract only on the basis of express contracts or contracts implied in fact.

107.21 Assignment of Contract Funds and Claims.

The Contractor shall not transfer or assign to any party any contract funds, due or to become due, or claims of any nature it has against the State, without the written approval of the Engineer having first been obtained. The Engineer, by sole discretion, considering primarily the interests of the State, may grant or deny such approval.

107.22 Risks Assumed by the Contractor.

The Contractor assumes the following distinct and several risks, whether they arise from acts or omissions, whether negligent or not, of:

1. the Contractor, its subcontractors, suppliers, materialmen, employees, agents, and all others working for the Contractor on the Project,
2. the State,
3. third persons, including the traveling public,
4. vandalism, or
5. any other cause,

and whether such risks are within or beyond the control of the Contractor as described in Subheadings 1 through 4 below. Excepted from this assumption of risks are only those risks that arise from solely affirmative acts done by the State subsequent to the execution of the Contract with actual and willful intent to cause loss, damage, or injury. The risks are as follows:

1. **Risks of Loss or Damage to the Permanent Construction.** Until Acceptance, and within the limits of the Project's work, the Contractor shall bear the risk of all loss or damage to all permanent construction and temporary construction performed under this Contract and to materials, whether or not it has received payment for such construction or materials under Subsection 109.05, 109.06, or 109.07. The Contractor shall take every precaution, as allowed by the Contract against injury or damage to any part of the construction or to materials by the action of the elements, the traveling public, vandalism, or from any other cause, whether arising from the execution or the non-execution of the work. The Contractor shall promptly repair, replace, and make good any such damage or loss without cost to the Department. The Contractor shall not bear such risk of loss or damage, which arises from acts of war or floods, tidal waves, earthquakes, cyclones, tornadoes, hurricanes, or other cataclysmic natural phenomenon unless such loss or damage is covered by insurance.
2. **Risks of Claims on Account of Injury, Loss, or Damage.** The Contractor shall bear the risk of claims, just or unjust, by third persons made against the Contractor or the State, on account of injuries (including wrongful death), loss, or damage of any kind whatsoever arising or alleged to arise out of or in connection with the performance of the Work. The risk of claims, whether or not actually caused by or resulting from the

performance of the Work or out of or in connection with the Contractor's operations or presence at or in the vicinity of the construction site or State premises, whether such claims are made and whether such injuries, loss, and damages are sustained, applies at any time both before and after Acceptance.

3. **Risks of Loss to Property of Those Performing the Work.** The Contractor shall bear the risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or the State for loss or damage to any property of subcontractors, materialmen, workers, and others performing the Work, and to lessors. Said risk occurs at any time before completion of removal of such property from the construction site or the State's premises, or the vicinity thereof.
4. **Risks of Claims Related to the Contractor's Safety and Health Plan.** The Contractor shall bear the risk of any action from or alleged to arise from the Contractor's Safety and Health Plan.

The Contractor shall indemnify and save harmless the State from any and all claims or alleged claims described in Subheadings 2, 3, and 4 above, and for all expense incurred by the State in the defense, including legal and related costs, settlement, or satisfaction thereof. If so directed, the Contractor shall at its own expense defend against such claims, in which event it shall not, without obtaining express advance permission from the State, raise any defense involving in any way jurisdiction of the tribunal, immunity of the State, governmental nature of the State, or the provisions of any statutes respecting suits against the State.

The provisions of this Subsection are also for the benefit of all officers, agents, and employees of the State so that they have all the rights which they would have under this Subsection if they were named at each place above at which the State is named, including a direct right of action against the Contractor to enforce the foregoing indemnity except, however, that the State may at any time in its sole discretion and without liability on its part cancel the benefit conferred on any of them by this Subsection, whether or not the occasion for invoking such benefit has already arisen at the time of such cancellation.

Neither Acceptance nor the making of final payment releases the Contractor from its obligations under this Subsection. Moreover, neither the enumeration in this Subsection nor the enumeration elsewhere in this Contract of particular risks assumed by the Contractor or of particular claims for which it is responsible shall be deemed:

1. To limit the effect of the provisions of this Subsection or of any other provision of the Contract relating to such risks or claims, or
2. To imply that the Contractor assumes or is responsible for risks or claims only of the type enumerated in this Subsection or in any Contract, or
3. To limit the risks that the Contractor would assume or the claims for which the Contractor would be responsible in the absence of such enumerations.

The Contractor expressly understands and agrees that any insurance protection required by the Contract, or otherwise provided by the Contractor, in no way limits the Contractor's responsibility to defend, indemnify, and save harmless the State as herein provided. Such insurance requirements are designed to provide greater assurance to the State that the Contractor is financially able to discharge its obligations under this Subsection and as to the risks assumed elsewhere in the Contract, and are not in any way construed as a limitation on the nature and extent of such obligations.

107.23 Insurance.

The Contractor shall procure and maintain, until Acceptance and at all times thereafter when the Contractor may be correcting, removing, or replacing defective work or completing plantings, insurance for liability for damages imposed by law and assumed under the Contract, of the kinds and in the amounts hereinafter provided, with insurance companies authorized to do business in the State. Before commencing the Work, the Contractor shall furnish to the Department a certificate or certificates of insurance together with declaration pages, in a form satisfactory to the Department, showing that the Contractor has complied with this Subsection. Insurance binders are not acceptable as a form of insurance certificate. All of the policies of insurance required to be purchased and maintained and the certificates, declaration pages, or other evidence thereof shall contain a provision or endorsement that the coverage afforded is not to be canceled, materially changed, or renewal refused until at least 30 days prior written notice has been given to the Engineer by certified mail. All certificates, notices, or declaration pages shall be submitted to the Engineer. Upon request, the Contractor shall furnish the Department with a certified copy of each policy itself, including the provisions establishing premiums. For Local Government Aid projects, the Board of Chosen Freeholders of the county or counties and the governing body of the municipality or municipalities within the limits of the Project shall also be included as the named insured on the comprehensive general liability and owner's protective insurance policies.

The types of insurance and minimum limits of liability are as follows:

1. **Comprehensive General Liability Insurance.** The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage together with excess coverage or

umbrella coverage with the same terms and conditions as the primary underlying coverage (following form) in an amount such that the primary and excess coverage or primary and umbrella coverage together equals or is greater than \$10,000,000. Said excess or umbrella policy shall contain a clause stating that it takes effect (drops down) in the event the primary coverage is impaired or exhausted.

The above required Comprehensive General Liability policy shall name the State, its officers, and employees as additional named insured.

The coverage to be provided under this policy shall be at least as broad as that provided by the standard basic, unamended, and unendorsed comprehensive general liability coverage forms currently in use in the State, which shall not be circumscribed by an endorsement limiting the breadth of coverage. Moreover, such policy shall be endorsed so as to delete any exclusions applying to property damage liability arising from explosions or arising from damage to underground utilities and collapse of foundations.

The insurance policy shall be endorsed to include contractual liability coverage, premises/operations coverage, products/completed operations coverage, broad form property damage coverage, independent contractors coverage, and personal injury coverage.

The Contractor shall provide documentation from the insurance company that indicates the cost of naming the State, its officers, and employees as named insured.

2. **Comprehensive Automobile Liability Insurance.** The policy shall cover owned, non-owned, and hired vehicles with minimum limits of liability in the amount of \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage, together with excess coverage or umbrella coverage with the same terms and conditions as the primary underlying coverage (following form) in an amount such that the primary and excess coverage or primary and umbrella coverage together equals or is greater than \$10,000,000. Said excess or umbrella policy shall contain a clause stating that it takes effect (drops down) in the event the primary coverage is impaired or exhausted.
3. **Owner's and Contractor's Protective Liability Insurance.** A separate Owner's and Contractor's Protective Liability Insurance Policy shall be provided. The minimum limit of liability shall be \$4,000,000 per occurrence as a combined single limit for bodily injury and property damage. The policy is to be written for the benefit of the State, its officers, and employees; they are to be named as the insured. The Contractor shall provide documentation from the insurance company that indicates the cost of the Owner's and Contractor's Protective Liability Insurance Policy.
4. **Workers Compensation and Employer's Liability Insurance.** Workers Compensation Insurance shall be provided according to the requirements of the laws of this State and shall include an all states endorsement to extend coverage to any State that may be interpreted to have legal jurisdiction. Employer's Liability Insurance shall be provided with the following minimum limits:
 - a. \$100,000 each accident
 - b. \$100,000 Disease each employee
 - c. \$500,000 Disease aggregate limit
5. **Marine Liability Insurance.** When a Contractor or subcontractor is engaged in marine operations, it shall be required to obtain US Longshoremen's and Harbor Worker's coverage and Maritime coverage. The Contractor or subcontractor shall also procure and maintain Marine Liability Insurance with protection and indemnity coverage with a minimum limit of liability of \$2,000,000 per occurrence.
6. **This subpart is intentionally left blank.** 7. **Pollution Liability Insurance.** The Contractor or the subcontractor engaged in work involving hazardous substances, as defined in Section 3 of PL 1993, c.139 (C.13:1K-8), or hazardous waste, as defined in Sect. 1 of PL 1976, c.99 (C.13:1E-38), shall procure and maintain pollution liability insurance, also known as "environmental impairment liability insurance."

Pollution liability insurance shall be provided either by endorsement to a commercial general liability policy or as a separate policy. This policy shall cover pollution claims arising from the development and implementation of the specified contaminated material's remedial action work plan and Health and Safety Plan. The minimum limit of liability shall be \$5,000,000 per occurrence and \$10,000,000 aggregate.

The policy is to be written for the benefit of the State, its officers, employees, and authorized representatives; they are to be named as additional insured. The Contractor shall provide documentation from the insurance company indicating the coverage, limitation of coverage, term of coverage, and cost of the pollution liability insurance policy.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor does it preclude the State from taking such other actions as are available to it under any other provisions of this Contract or otherwise in law.

All proof of insurance submitted to the State shall clearly set forth all exclusions and deductible clauses. The Engineer may allow certain deductible clauses that the Engineer does not consider excessive, overly broad, or harmful to the interests of the State. Standard exclusions will be allowed provided they are not inconsistent with the requirements of this Subsection. Allowance of any additional exclusions is at the discretion of the Engineer. Regardless of the allowance of exclusions or deductions by the Engineer, the Contractor shall be responsible for the deductible limit of the policy and all exclusions consistent with the risks it assumes under this Contract and as imposed by law.

In the event that the Contractor provides evidence of insurance in the form of certificates of insurance, valid for a period of time less than the period during which the Contractor is required by the terms of the Contract to maintain insurance, said certificates are acceptable, but the Contractor shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance so that the State is continuously in possession of evidence of the Contractor's insurance according to the foregoing provisions.

In the event the Contractor fails or refuses to renew its insurance policy, or the policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this Subsection, the State may refuse to make payment of any further monies due under this Contract or refuse to make payment of monies due or coming due under other contracts between the Contractor and the State. The State may use monies retained under this paragraph to renew the Contractor's insurance for the periods and amounts referred to above. Alternately, the State may default the Contractor and direct the surety to complete the Project. During any period when the required insurance is not in effect, the Engineer may suspend performance of the Contract. If the Contract is so suspended, additional compensation or extension of Contract Time is not due on account thereof.

Payment for Owner's and Contractor's protective liability insurance, or pollution liability insurance will be made at the prices bid, except that should the actual costs, as evidenced by the paid bills, be lower than the bid amounts, payment for the difference between the actual costs and the bid amounts shall not exceed 25 percent of the actual costs and will not be made until Completion. Should the actual costs be higher than the bid amounts, there will be no additional compensation and payment will be made at the bid prices.

Payment will be made under:

<i>Pay Item</i>	<i>Pay Unit</i>
OWNER'S AND CONTRACTOR'S PROTECTIVE LIABILITY INSURANCE	LUMP SUM
POLLUTION LIABILITY INSURANCE	LUMP SUM

All other insurance costs, as specified in this Subsection, shall be at the Contractor's own expense.

107.24 Personal Liability of Public Officials.

There shall be no liability upon the Commissioner, Engineer, or their authorized representatives, either personally or as officials of the State in carrying out any of the provisions of the Contract nor in exercising any power or authority granted to them by or within the scope of the Contract, it being understood that in all such matters they act solely as agents and representatives of the State. Similarly, for Local Government Aid projects there shall be no liability, either personally or in an official capacity, upon the Board of Chosen Freeholders of the county or counties nor upon the governing body of the municipality or municipalities within the limits of the Project.

107.25 Recovery of Monies by the State.

Whenever it is provided in the Contract Documents that the State, Department, or Engineer is to withhold or deduct money from any monies due or that may become due the Contractor, or that the Contractor is to pay or return monies for any reason, or that the State, Department, or Engineer can charge against the Contractor certain costs, assessments, or fines, or that the State, Department, or Engineer can recover any sum for any reason from the Contractor, it is understood that the State has available to it any monies due or that may become due the Contractor under the Contract and on other contracts between the Contractor and the Department. Such other contracts shall include joint ventures in which the Contractor is a participant but only to the extent of its participation. The right to recover against the Contractor as herein provided is in addition to and does not affect the right of the State to seek recovery against the Contractor or surety under the Contract, bonds, or as otherwise allowed by the law.

107.26 No Waiver of Legal Rights.

Notwithstanding any other provision of the Contract, for a period of three years after Acceptance, all estimates and payments made pursuant to [Section 109](#), including the Final Certificates and Final Payment, are subject to correction and adjustment for clerical or other errors in the calculations involved in the determination of quantities and payments. The Contractor and the Department agree to pay to the other any sum due under the provisions of this Subsection, provided, however, if the total sum to be paid is less than \$100, payment will not be made.

A waiver on the part of the Department of any breach of any part of the Contract is not to 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 at any time both before and after Acceptance for latent defects, fraud, such gross mistakes as may amount to fraud, or actions affecting the Department's rights under any warranty or guarantee.

107.27 Limitations of Liability.

In any event, whether under the provisions of the Contract, as a result of breach of Contract, tort (including negligence), or otherwise, the State will not be liable to the Contractor for any special, consequential, incidental, or penal damages including, but not limited to, loss of profit or revenues, loss of rental value for contractor-owned equipment, damages to associated equipment, cost of capital, or interest of any nature.

107.28 Environmental Protection.

The Contractor shall comply with all applicable Federal, State, and local laws and regulations, and all conditions of permits controlling pollution of the environment. Necessary precautions shall be taken to prevent pollution of land, streams, lakes, ponds, wetlands, groundwater, and reservoirs both within and beyond Project limits with any pollutants or contaminants and to prevent pollution of the atmosphere from particulate and gaseous matter.

All modifications to permits that are proposed by the Contractor shall be submitted to the Department for approval before submitting them to the regulatory agencies having jurisdiction and interest. After receiving the Department's approval, the Contractor shall obtain all other necessary approvals from the appropriate regulatory agencies. If the requests for modifications to permits are not approved by the Department or the regulatory agency, then the Contractor shall build the Project according to the original approval. Any time required to obtain the approvals will not warrant extensions of Contract time. The Contractor shall perform the Work in compliance with the terms and conditions of all permits procured for the Project. If the Contractor is not in compliance with permit provisions, corrective actions shall be taken immediately. The Engineer may suspend the Work, wholly or in part, according to [Subsection 108.15](#), until such time as the Contractor is fully in compliance with all permits. All corrective and remedial work required to bring the Contractor into compliance shall be performed at no cost to the State.

The Contractor shall pay all fees and violation charges that arise out of or are alleged to arise out of its noncompliance or the noncompliance of its agents, employees, and subcontractors with permit requirements. In its sole discretion, the Department may determine to hold the Contractor responsible for all engineering, inspection, and administration costs (including overhead) incurred as a result of its noncompliance. If it so determines, the Department will deduct the amount of such costs from the monthly estimate and payment due according to [Subsection 109.05](#).

The Contractor shall provide to the Engineer, whenever requested, all documentation pertaining to the noncompliance and related corrective actions taken.

The Contractor shall also comply with the following:

- 1 Control of Noise and Air Pollution.** The Contractor shall employ all possible methods to minimize noise dredging, stevedoring and transportation operations. .

All construction equipment powered by an internal combustion engine shall be equipped with a properly maintained muffler. Air-powered equipment shall be fitted with pneumatic exhaust silencers. Air compressors shall meet EPA noise emission standards.

Stationary equipment powered by an internal combustion engine shall not be operated within 150 feet of noise sensitive sites without portable noise barriers placed between the equipment and the noise sensitive sites. Noise sensitive sites include residential buildings, motels, hotels, schools, churches, hospitals, nursing homes, libraries, and public recreation areas. Portable noise barriers shall be constructed of plywood or tongue and groove boards with a noise absorbent treatment on the interior surface (facing the equipment).

All methods and devices employed to minimize noise are subject to the daily approval of the Engineer.

- 3. Historic Places.** The Contractor will not be permitted to obtain borrow excavation from locations eligible for or listed on the State or National Registers of Historic Places. Copies of the State and National Registers of Historic Places are available from the Department's Bureau of Environmental Services.
- 4. Disposal Sites Beyond Project Limits.** Dredged material shall be transported to the decontamination processing facility at Bayshore Recycling in Keasby, NJ.
- 5. Borrow Pits.** If backfilling is implemented pursuant to Sections 201.03 and 201.05, material shall not be excavated from a borrow pit beyond the Project's limits until the Engineer has received a copy of the soil and sediment control plan certified by the soil conservation district according to NJSA 4:24-39 *et seq.*

SECTION 108 - PROSECUTION AND PROGRESS

108.01 Assignment.

The performance of the Contract may not be assigned, except upon the written consent of the Commissioner. Consent will not be granted to any proposed assignment that would relieve the original Contractor or its surety of their responsibilities under the Contract nor will the Commissioner consent to any assignment of a part of the Work under the Contract.

108.02 Subcontracting.

Subject to the provisions of this Subsection and to the consent of the Commissioner, Work may be subcontracted except that the item of mobilization or any part thereof shall not be subcontracted. It is understood, however, that any consent of the Commissioner for the subcontracting of any Work of the Contract in no way relieves the Contractor from its full obligations for all Work under the Contract, nor the surety of its obligations under the bond. The Contractor shall at all times give its personal attention to the fulfillment of the Contract and shall keep the Work under control. The Contractor shall be responsible for all work of subcontractors which work shall conform to the provisions of the Contract Documents. The consent to the subcontracting of any part of the Work shall not be construed as an approval of the said subcontract or of any of its terms, but is to operate only as an approval of the Contractor's request for the making of a subcontract between the Contractor and its chosen subcontractor.

The Contractor shall perform with its own organization Contract Work amounting to at least 50 percent of the original Total Contract Price.

Where an entire item is subcontracted, the value of work subcontracted will be determined based on the Pay Item Contract price. When part of the quantity of a unit price item is subcontracted, the value of the work subcontracted will be determined by Pay Item bid price multiplied by the quantity performed by the subcontractor. If the subcontractor performs part of the work of any unit or quantity of a unit price item, that entire unit will be considered subcontracted, and the value of the work subcontracted will be determined by the Pay Item bid price multiplied by the quantity of units considered subcontracted to the subcontractor. When a portion of a lump sum item or an item which includes specialty work is subcontracted, the value of work subcontracted will be determined based on the estimated cost of the work subcontracted as determined from the breakdown of cost submitted by the Contractor. When part of a sign support structure is subcontracted, the provisions for a lump sum item govern.

Application for subcontracting any part of the Work shall be made by the Contractor on forms furnished by the Department. That form, fully completed in quadruplicate, one original and three copies, shall be furnished to the Engineer. The Contractor shall attach to that form a certified copy of the executed subcontract between the Contractor and the subcontractor. The copy of the subcontract will be used in the review of the application. The Contractor shall also attach to that form, proof of the Subcontractor's valid business registration with the Division of Revenue in the New Jersey Department of Treasury. Pursuant to P. L. 2001, c.134 (N.J.S. 52:32-44), the Contractor is notified that no Subcontract shall be entered into by any Contractor under any Contract with the Department, unless the Subcontractor first provides proof of a valid business registration. The Department will not consent to the proposed Subcontracting unless the Contractor provides the required proof of the Subcontractor's valid business registration. The Contractor shall also attach to that form (application for subcontracting form) proof of the Subcontractor's valid, current registration with the New Jersey Department of Labor, Division of Wage and Hour Compliance as required by "Public Works Contractor Registration Act," N.J.S.A. 34:11-56.48 et seq. (P.L. 2003, c. 91). Pursuant to P.L. 2003, c. 91, the Department will not consent to the proposed subcontracting, and the Subcontractor shall not perform any work under the Contract, unless the Contractor first provides the required proof of the Subcontractor's valid, current registration with the New Jersey Department of Labor, Division of Wage and Hour Compliance as required by "Public Works Contractor Registration Act." The Contractor shall ensure full compliance with the Public Works Contractor Registration requirements by their Subcontractors.

After review of the application, the consent of or rejection by the Commissioner of the subcontracting will be provided to the Contractor in writing. Before the receipt of the written consent from the Commissioner, Work shall not be performed on the Project under the subcontract.

Subcontracting will not be permitted to firms and individuals suspended or debarred by the Department or included in the Report of Suspensions, Debarments, and Disqualifications of Firms and Individuals as maintained by the Department of the Treasury, Division of Building and Construction, Bureau of Contractor Prequalification.

Where the value of work subcontracted exceeds \$1,000,000, subcontracting will be permitted only to subcontractors prequalified with the Department for the work type being subcontracted. Moreover, where one subcontractor has pending, and as yet uncompleted, work on more than one Department project, the aggregate value of

which, plus the value of the proposed subcontract, exceeds \$1,000,000, such subcontractor must be prequalified with the Department for the work type.

The subcontractor shall look only to the Contractor for the payment of any claims of any nature whatsoever arising out of the subcontract. The subcontractor agrees, as a condition of the Commissioner's consent to the making of the subcontract, that the subcontractor shall make no claims against the Commissioner or its agents or employees for any Work performed or thing done by reason of the subcontract, or for any other cause that may arise by reason of the relationship created between the Contractor and subcontractor by the subcontract.

Additionally, the Contractor shall give assurances, before the Commissioner's giving consent, that when minimum wage rates are specified they shall apply to labor performed on all subcontracted Work.

The Commissioner will not consent to the making of any subcontract unless the proposed subcontractor furnishes a statement to the effect that the subcontractor is acquainted with all of the provisions of the Contract.

108.03 Commencement of Work.

Upon execution of the Contract by the Commissioner, a fully executed copy together with a Notice to Proceed will be provided to the Contractor. Receipt of the executed Contract and Notice to Proceed shall constitute the Contractor's authority to enter upon the Project site, provided the Contractor has submitted to the Engineer, and the Engineer has accepted, the insurance certificates required under [Subsection 107.23](#) and a preconstruction conference has been held. Within five State Business Days of the Notice to Proceed, the Contractor shall submit a detailed Work Plan for performing the Work. The Engineer will review the Work Plan for compliance with the Technical Proposal submitted during Bidding. The Contractor shall prepare a final Work Plan based on the State's review, which addresses the State's comments. Construction operations shall not begin until the Contractor has supplied, and the Engineer has accepted, the final Work Plan, the schedule and other certifications, forms and any other information required by the Contract Documents.

The Contractor shall be prepared to discuss the following information at the preconstruction conference:

1. Designation of responsible personnel.
2. Subcontractors.
3. Coordination issues with other contractors and projects.
4. Progress Schedule.
5. Critical work sequencing.
6. Transmittal, review and distribution of Contractor submittals.
7. Schedule of submittals.
8. Processing of Field Orders, requests for information and clarification and Change Orders.
9. Work Plan.
10. Debris removal activities.
11. Hydrographic surveys.
12. Agreements for dredged material transfer services.
13. Insurance.
14. Health and Safety.
15. Security.
16. Permits.
17. Emergency telephone numbers.
18. Operation and maintenance manuals.
19. Work of the Project.

The exact date of construction is dependent upon the tidal cycles and shall be determined and approved by Department. The optimal time for implementation is during a neap tidal cycle predicted using the tide charts. The neap tides will occur on the following dates for which dredging may commence:

October 24- 28, 2005 (Department's 1st choice)
November 7- 11, 2005 (Department's 2nd choice)

Although the exact time of construction will be determined by agreement between the Contractor and Department, the Contractor shall be required to commence construction during one of the above referenced time periods. Since time is of the essence, the Contractor shall follow an expedited process for work plan preparation, review and contract award. The costs associated with implementing such a process should be fully reflected in the Contractor's Bid.

If the Contractor begins Work before the execution of the Contract by the Commissioner, the Work shall be considered as having been done at the Contractor's own risk and as a volunteer. In no event, however, shall the Contractor work at the Project site before execution of the Contract by the Commissioner unless proof of insurance has been provided according to Subsection 107.23. In the event the Commissioner decides to reject the Contract, the Contractor shall at its expense perform whatever Work is necessary to leave the site in an approved condition. If any of the Work performed before the Commissioner's rejection affects any existing road or highway or waterway bed or bank, the Contractor shall at its expense restore it to its former condition or the equivalent thereof, as approved. However, all Work done according to the Contract Documents before its execution by the Commissioner will, if the Commissioner executes the Contract, be considered authorized Work and will be paid for as provided in the Contract.

The Contractor is not entitled to additional compensation or extension of Contract Time for any delay, hindrance, or interference caused by or attributable to commencement of Work before the agreed upon date between the Department and the Contractor following execution of the Contract by the Commissioner.

The Contractor shall give the Engineer at least 10 calendar days advance notice in writing of its intention to start construction operations. Adequate advanced notice is necessary due to the coordination with the Department and team to conduct water quality monitoring during construction.

108.04 Progress Schedule and Prosecution of the Work.

The contractor shall provide the Department with a progress schedule in a form acceptable to the Department as part of the Work Plan submission as required by Subsection 108.03.

108.05 Mobilization.

Mobilization shall consist of the preparatory work and operations necessary for the movement of personnel, equipment, supplies, and incidentals to the Project site, and other work performed or costs incurred prior to beginning Work.

Payment for mobilization will be made on a lump sum basis. If the Contractor begins actual dredging operations, the lump sum bid for mobilization will be paid in the first payment estimate processed by the Department after the start of the dredging operations. Should the Department direct the Contractor not to proceed with the dredging operations, the Contractor will be paid for the actual mobilization costs incurred by the Contractor up to that time or the lump sum bid for mobilization, whichever is less. In no case shall the payment for mobilization costs exceed the lump sum bid by the contractor for that pay item.

Payment will be made under:

Pay Item
MOBILIZATION

Pay Unit
LUMP SUM

108.06 This Subsection is intentionally left blank.

108.07 Character of Workers, Methods, and Equipment.

The Contractor shall at all times employ sufficient labor and equipment for prosecuting the several classes of Work to full completion in the manner and time required by the Contract Documents.

All workers shall have sufficient skill and experience to properly perform the Work assigned to them. Workers engaged in special Work or skilled Work shall have sufficient experience in that Work and in the operation of the equipment required to perform the Work satisfactorily.

Any person employed by the Contractor or by any subcontractor who, in the opinion of the Engineer, does not perform Work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be promptly removed by the Contractor or subcontractor employing the person and shall not be again employed in any portion of the Work without approval. Should the Contractor fail to remove such person or persons as required, or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until compliance with such orders.

Except for regularly retired employees, the Contractor and its subcontractors shall not, without the written consent of the public employer of such person, engage on a full, part-time, or other basis, during the period of the Contract, any of the professional or technical personnel of the New Jersey Department of Transportation or of any State, county, or municipality, who are or have been at any time during the period of the Contract or for 30 days before Award, in the employ of such public agency.

All equipment that is proposed to be used on the Work shall be of sufficient size and in such mechanical condition as to meet the requirements of the Work and to produce a satisfactory quality of Work. Equipment used on any portion of the Project shall not cause damage to the waterway or project site.

The Contractor will not be permitted to use equipment that is owned and/or operated by firms and individuals suspended or debarred by the Department or included in the "Report of Suspensions, Debarments and Disqualifications of Firms and Individuals" as maintained by the Department of the Treasury, Division of Building and Construction, Bureau of Contractor Prequalification.

When the methods and equipment to be used by the Contractor in accomplishing the construction are not specified, the Contractor is free to use any methods or equipment that accomplishes the Work. When the use of certain methods and equipment is specified, the specified methods and equipment shall be used unless otherwise authorized according to [Subsection 106.12](#).

108.08 Working Site.

Except as otherwise provided, any space that the Contractor may require for plant, equipment, storage, or other purposes in addition to that available at the Project site, shall be procured by the Contractor, and the cost thereof shall be included in the prices bid for the various Pay Items scheduled in the Proposal. In the event of default as set forth in [Subsection 108.17](#), the Commissioner has the right to take over and occupy such space, or cause it to be occupied, for the purpose of completing the Project, at the Contractor's expense. If the space is leased, the lease shall contain a provision that in event of default by the Contractor the lease may be assigned to the State or its nominee at their election. The Contractor agrees in event of said default, that it shall make such assignment.

108.09 Unusual Site Conditions.

During the progress of the Work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the conditions, and if the Engineer determines that the conditions materially differ and could not have been discovered by the Contractor pursuant to [Subsection 102.06](#) and if they cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will notify the Contractor of the Engineer's determination whether or not an adjustment of the Contract is warranted. Adjustments in Contract Time will be made pursuant to [Subsection 108.11](#). Adjustments in compensation will be made pursuant to [Subsections 104.02, 104.03, 104.05, 104.06, 104.08, 109.03, and 109.04](#).

No Contract adjustment that results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice on forms provided by the Department.

No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.

108.10 Time of Completion.

The Contractor shall complete all or any portion of the Project called for under the Contract in all parts and requirements within the time or times for completion of the Contract set forth herein. Time is of the essence as to all time frames stated in the Contract Documents; therefore, all time frames shall be strictly enforced.

- A. The entire Work of the Project shall be completed in five Calendar Days, not including mobilization, debris removal (if desired) and demobilization and authorized stand by time. The Contractor shall complete all work by November 18, 2005.
- B. Debris removal may take place prior to the excavation of dredged material.

The dredging required for this project shall be completed within 5 calendar days of the start of dredging.

108.11 Extensions and Reductions of Contract Time.

- A. **Basis for Extension.** Where appropriate under the provisions of this Subsection, extensions or reductions to the Contract Time may be provided by Construction Order, however, such extensions or reductions will be allowed only to the extent that the increase or decrease in the Work or delays of the types indicated below affect completion of the dredging. Increases or decreases in Work or such delays, which do not affect the overall Completion, are not to be the basis for reduction or extension of Contract Time. Extensions of Contract Time will not be granted under this Subsection where it is determined that the Contractor could have avoided the circumstances which caused the request for extension.

If the Contractor is delayed in completion of the Work by reason of changes made under Subsection 104.02, or by any act of other contractors consistent with Subsection 105.10, or due to the discovery of archeological finds consistent with Subsection 108.13, or the discovery of hazardous substances, or by any act of the Engineer or of the Department not contemplated by the Contract, an extension of Contract Time commensurate with the delay in overall completion of the Contract thus caused will be granted, and the Contractor is relieved from any claim for liquidated damages or engineering and inspection charges.

Additionally, the Contractor may be granted an extension of Contract Time and not be assessed liquidated damages or the costs of engineering and inspection for any portion of the delay in overall completion of the Work beyond the time provided in Subsection 108.10 caused by the following reasons:

1. High energy events associated with large river flows or extreme spring tide conditions. Large river flows in the Passaic may occur for up to one week following prolonged and significant precipitation events;
2. acts of civil or military authorities, war, or riot;
3. fire;
4. floods, tidal waves, earthquakes, cyclones, tornadoes, hurricanes, or other cataclysmic natural phenomenon (except on working day contracts);
6. extreme weather conditions (see Item 1 of the fourth paragraph) (except on working day contracts);
5. epidemics or quarantine restrictions;
6. strikes or labor disputes beyond the control of the Contractor which prevent work on the construction operations which are critical to the completion of the Project;
7. shortages of materials (see Item 2 of the fourth paragraph) or freight embargoes;
8. acts of the State in its sovereign capacity;
9. failure of the Engineer to furnish interpretations of the Contract Documents (see Item 3 of the fourth paragraph).

Except where specifically provided in the Contract Documents, the Contractor shall not make any claim for damages or additional compensation for any delay in or hindrance to the performance of the Contract occasioned by any act or omission to act by the State or any of its representatives, or for any of the reasons enumerated in this Subsection and agrees that any such claim shall be fully compensated for by an extension of Contract Time to complete performance of the Work.

Extensions of Contract Time will not be granted due to delays caused by, or in any way related to, the financial condition of the Contractor, subcontractors, sub-subcontractors, material, men, fabricators, or suppliers. The Contractor and its surety assume full responsibility for ensuring that the financial condition of any of the above does not delay completion of the Contract.

If, as a result of modifications made under Subsection 104.02, 104.05, 104.06, or 108.09, the Work required is reduced or altered so that the time required for Completion is reduced, the Engineer may reduce the Contract Time provided under Subsection 108.10. The Engineer will evaluate the facts and the extent of the reduction. The Engineer's findings thereon will be final and conclusive.

It is the intention of the above provisions that the Contractor or surety is not relieved of liability for liquidated damages or engineering and inspection charges for any period of delay in Completion in excess of that expressly provided for in this Subsection.

108.12 This Subsection is intentionally left blank. Right-Of-Way Information and Delays.

108.13 Archeological Findings.

When excavating operations encounter prehistoric or historic artifacts or remains, the operations shall be temporarily discontinued in that area. The Engineer will contact the Project Manager who will consult with one of the NJDOT's cultural resource/archeological professionals to determine the appropriate course of action.

The Contractor agrees to make no claim for additional payment or for an extension of Contract Time because of any delays in the progress or alteration of the prosecution of the Work due to such discontinuance of the work or removal of any such remains or artifacts for the first ten days of such delay. Thereafter and beginning on the eleventh day, compensation for such delay and an extension of Contract Time will be considered according to the provisions of [Subsection 108.14](#).

108.14 Suspension of Work for Convenience of the State.

The Engineer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as the Engineer may determine to be appropriate for the convenience of the State.

If the performance of all or any portion of the Work is suspended, delayed, or interrupted by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation or Contract Time or both are due as a result of such suspension, delay, or interruption, the Contractor shall submit to the Engineer in writing a request for adjustment within seven Calendar Days of receipt of the notice to resume Work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost or time or both required for the performance of the Contract have increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the Contract in writing accordingly. The Engineer will determine and notify the Contractor whether or not an adjustment of the Contract is warranted. Adjustments in Contract Time will be made pursuant to [Subsection 108.11](#). Adjustments in compensation will be made pursuant to [Subsections 104.02, 104.03, 104.05, 104.06, 104.08, 109.03, and 109.04](#).

No Contract adjustment will be considered unless the Contractor has submitted the request for adjustment within the time prescribed.

No Contract adjustment will be allowed under this clause to the extent that performance would have been suspended, delayed, or interrupted by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

The Engineer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as the Engineer may determine to be appropriate for the convenience of the State.

If the performance of all or any part of the Work is, for any period of time, suspended, delayed, or interrupted by an act of the Engineer in the administration of the Contract, or as provided under [Subsection 108.12](#) or [108.13](#), an adjustment will be made for any increase in the cost of performance of the Work, excluding profit, necessarily and directly caused by such suspension, delay, or interruption pursuant to [Subsection 109.04](#), and where appropriate, an extension of Contract Time may be granted as specified in [Subsection 108.11](#). However, adjustment will not be made under this Subsection for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault of negligence of the Contractor, or that such adjustment is provided for or excluded under any other provision of the Contract.

The failure of the Engineer to consider the Work suspended and to allow for an adjustment in the compensation or in the Contract Time will not bar recovery under the foregoing provisions, provided the Contractor gives written notice to the Engineer within ten days of the start of the alleged suspension. The failure of the Contractor to give such notice pursuant to the provisions of this Subsection shall constitute a waiver of any and all claims and damages which would have been avoided or mitigated had such timely notice been given. Such written notification shall be submitted on forms provided by the Department.

108.15 Temporary Suspension of Work.

The Engineer has the authority to suspend the Work, wholly or in part, for such period as deemed necessary due to unsuitable weather, or for such time as deemed necessary due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the Contract. The Contractor shall promptly comply with the written order of the Engineer to suspend the Work wholly or in part. The suspended work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing.

In the event that a suspension of Work is ordered as provided above, and should such suspension be ordered by reason of the failure of the Contractor to carry out orders or to perform any provision of the Contract; or by reason of weather conditions being unsuitable for performing any item or items of Work, which work, in the sole opinion of the Engineer, could have been performed before the occurrence of such unsuitable weather conditions had the Contractor diligently prosecuted the Work when weather conditions were suitable; the Contractor, at its expense, shall do all the work necessary to provide a safe, smooth, and unobstructed passageway through the construction area for use by public traffic during the period of such suspension. In the event that the Contractor fails to perform the work above specified, the Department will perform such work and the cost thereof will be deducted from any monies due or that may become due the Contractor. In the event that a suspension of Work is ordered by the Engineer due to unsuitable weather conditions and, in the sole opinion of the Engineer, the Contractor has prosecuted the Work with energy and diligence before the time that operations were suspended, the cost of providing a smooth and unobstructed passageway through the

Work will be paid for as Extra Work as provided in [Subsection 109.03](#), or, at the option of the Engineer, such work will be performed by the Department at no cost to the Contractor.

If the Engineer orders a suspension of all of the Work or a portion of the Work, which is the current controlling operation or operations, due to unsuitable weather, the days on which the suspension is in effect are not considered Working Days on Working Day contracts. If a portion of Work at the time of such suspension is not a current controlling operation or operations, but subsequently does become the current controlling operation or operations, the determination of Working Days will be made on the basis of the then current controlling operation or operations. Similarly, on Calendar Day and specified completion date contracts, extensions of Contract Time will be granted only if the suspension affects the overall completion of the Contract and the other requirements of [Subsection 108.11](#) are satisfied.

If a suspension of Work is ordered by the Engineer due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the Contract, the days on which the suspension order is in effect are to be considered Working Days if such days are Working Days within the meaning of the definition set forth in [Subsection 101.03](#). On Calendar Day and specified completion date contracts, extensions of Contract Time will not be granted due to such suspension.

The Contractor shall have no claim for additional compensation as a result of suspension ordered for the reasons set forth in this Subsection, except as to the costs of providing a smooth and unobstructed passageway consistent with the above provisions.

108.16 Failure to Complete on Time.

The Contractor and the Department recognize that delay in Completion results in damages to the State in terms of the effect of the delay on the use of the Project, upon the public convenience and economic development of the State, and also results in additional costs to the State for engineering, inspection, and administration of the Contract. Because it is difficult or impossible to accurately estimate the damages incurred; therefore, the parties agree that if the Contractor fails to complete the Contract within the time stated herein, or within such further time as may have been granted according to the provisions of the Contract, the Contractor shall pay the State liquidated damages according to those provided herein. Such liquidated damages shall be paid for each and every day, as hereafter defined, that the Contractor is in default to complete the Contract.

1. For each Calendar Day that the Contractor fails to complete the dredging as specified in Item A of Subsection 108.10 of these Specifications, the Contractor shall pay liquidated damages consisting of Construction Engineering Costs, as defined in Subsection 101.03, to the State in the amount of \$25,000.00.

108.17 Default and Termination of Contractor's Right to Proceed.

If the Contractor:

1. fails to begin the Work under the Contract within the time specified in [Subsection 108.03](#), or
2. fails to perform the Work with sufficient workers and equipment or with sufficient materials to ensure its completion within the Contract Time specified, or any extension thereof, or
3. fails to complete the Contract within the Contract Time specified, as extended, or
4. performs the Work unsuitably or neglects or refuses to remove materials or to again perform such Work as may be rejected as unacceptable and unsuitable, or
5. discontinues the prosecution of the Work, or
6. fails to resume Work which has been discontinued within a reasonable time after notice to do so, or
7. becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
8. allows any final judgment to stand against it unsatisfied for a period of ten days, or
9. makes an assignment for the benefit of creditors, or
10. fails to acquire or maintain the required insurance, or
11. fails to comply with Contract requirements regarding minimum wage payments, disadvantaged business enterprises, or equal employment opportunity requirements, or
12. is a party to fraud, or
13. for any other cause whatsoever, fails to carry out the Work in an acceptable manner, the Engineer will give written notice to the Contractor and surety of such delay, neglect, or default, demanding the elimination of such cause for default.

If the Contractor or surety, within a period of ten days after such notice, does not proceed in accordance therewith, then the Commissioner has, upon written notification from the Engineer of the fact of such delay, neglect, or default and the Contractor's failure to comply with such notice, full power and authority without violating the Contract, to declare

the Contractor in default and notify the Contractor to discontinue the Work. The declaration of default will be in writing and given to the Contractor and surety. The Department may appropriate any or all materials and equipment on the site as may be suitable and acceptable and may direct the surety to complete the Contract or may enter into an agreement for the completion of the Contract according to the terms and provisions thereof with another contractor or the surety, or use such other methods required for the completion of the Contract, including completion of the Work by the Department.

The Contractor and surety are not relieved of the assessment of liquidated damages under [Subsection 108.16](#) because of the Contractor's default.

All costs and charges incurred by the Department, together with the cost of completing the Work, will be deducted from any monies due or that may become due the Contractor and surety. If such expense exceeds the sum that would be available from such monies, then the Contractor and the surety shall be liable and shall pay to the Department the amount of such excess.

The rights and remedies of the State are in addition to any other rights and remedies provided by law or under the Contract and the Bonds.

If, after notice of default under the provisions of this Subsection, it is determined for any reason that the Contractor was not in default or that the delay was excusable, the rights and obligations of the parties are the same as if the notice of termination had been issued pursuant to [Subsection 108.18](#).

Where the Department's default of the Contractor pursuant to the provisions of this Subsection is found by a court to be legally improper, the Contract will be treated as if terminated for convenience pursuant to [Subsection 108.18](#) and such termination is to be compensated for according to provisions of [Subsection 108.18](#).

108.18 Termination of Contract.

The Commissioner may, by written order, terminate the Contract or any portion thereof for convenience after determining that for reasons beyond the Contractor's control, the Contractor is unable to proceed with or complete the Work as contracted for, or that termination is in the public interest.

Upon receipt of an Order of Termination for convenience, the Contractor shall not proceed with any item of Work that is not specified in the Order of Termination. The Contractor shall complete all items of Work specified in the termination order. Such Work shall include punch list items and all Work necessary to ensure the safety of the public, to properly secure existing work already constructed or partially constructed, and to secure the Project site. This work so ordered shall be performed according to the Contract Documents and may include items of work not in the original Contract. The Contract shall be considered substantially complete upon completion and acceptance of all items of Work specified in the Order of Termination, except punch list items. After completion of the punch list items and all documents required by the Contract, the Contract shall terminate upon issuance of a Final Certificate and payment. The Commissioner reserves the right to declare in default a Contractor who fails to carry out the conditions set forth in an Order of Termination for convenience.

When the Commissioner orders termination of the Contract for convenience, all completed items of Work as of that date will be paid for at the Contract price. Payment for partially completed work will be paid for at agreed prices or by Force Account methods described in [Subsection 109.03](#) provided, however, that such payment does not exceed the Contract price of the Pay Item under which the Work was performed. Items that are eliminated in their entirety by such termination will be paid for only to the extent provided in [Subsection 104.06](#). Payment for new items, if any, will be made either at agreed prices or paid for by Force Account methods described in [Subsection 109.03](#).

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

Within 60 days of the effective termination date, the Contractor shall submit claims for additional costs actually incurred not covered above or elsewhere in these Specifications. Such claims may include such cost items as reasonable mobilization efforts, overhead expenses attributable to the terminated Project, subcontractor costs not otherwise paid for, actual idle labor cost if Work is stopped in advance of the termination date, and guaranteed payments for private land usage as part of original Contract. Costs which are prohibited under [Subsection 107.27](#) and anticipated profits on work not performed are not allowed.

The Commissioner may also, by written order, terminate the Contract or any portion thereof for cause after determining that reasons for default as stated in [Subsection 108.17](#) exist. The decision whether to terminate for cause or declare the Contractor in default will be made in the sole discretion of the Commissioner acting in the best interest of the State. Before the issuance of an Order of Termination for cause, the Engineer will give written notice to the Contractor and surety of the causes for the proposed termination. The notice will demand the elimination of such causes.

If the Contractor or surety, within a period of ten days after such notice, does not proceed in accordance therewith, the Commissioner may terminate the Contract for cause.

The Order of Termination for cause will terminate the Contractor's right to proceed with any items of Work except as specified in the termination order. Such work will include punch list items and all work necessary to ensure the safety of the public, to properly secure existing work already constructed or partially constructed, and to secure the Project site. This work so ordered shall be performed according to the Contract Documents and may include such items of Work not in the original Contract. Substantial Completion shall occur when all Work specified in the termination order, except for punch list items, is complete and accepted by the Engineer. After the completion of all punch list items and all documents required by the Contract, the Contract shall terminate upon issuance of a Final Certificate and payment.

When the Commissioner orders termination of the Contract for cause, all completed items of Work as of that date will be paid for at the Contract price. Payment for partially completed work will be made either at agreed prices or by Force Account methods described in [Subsection 109.03](#) provided, however, that such payment does not exceed the Contract price of the Pay Item under which the Work was performed. Items that are eliminated in their entirety by such termination will be paid for only to the extent provided in [Subsection 104.06](#). Payment for new items, if any, will be made either at agreed prices or paid for by Force Account methods described in [Subsection 109.03](#). No other costs will be allowed the to Contractor. Profit and overhead not included in the Contract price for Pay Items for work completed or partially completed will not be allowed except that profit and overhead on Force Account work may be paid consistent with [Subsection 109.03](#).

In terminating a Contract for cause, the Department does not waive its right to sue the Contractor for any costs incurred by the Department as a result of the termination, including the additional costs of completing the Project. The Commissioner reserves the right to declare in default a Contractor who fails to carry out the conditions set forth in an Order of Termination for cause.

Where the Department's termination of the Contract for cause pursuant to the provisions of this Subsection is found by a court to be legally improper, the termination of the Contract for cause will be treated as if it had been a termination for convenience, and such termination is to be compensated for according to the provisions of this Subsection governing terminations for convenience.

In terminating a Contract for convenience or cause pursuant to this Subsection:

1. The Contractor shall make cost records available consistent with [Subsection 109.12](#) to the extent necessary to determine the validity and amount of each item for which it seeks compensation.
2. The Contractor shall not be relieved of contractual responsibilities for the Work completed, nor shall the surety be relieved of its obligations for and concerning any just claim arising out of the Work performed.
3. The Contractor shall, if so directed by the Engineer, remove promptly any or all of its equipment and supplies from the Project site or other property of the State. If the Contractor fails to remove the equipment and supplies as directed, the Engineer may remove such equipment and supplies at the expense of the Contractor.

108.19 This Subsection is intentionally left blank. Lane Occupancy Charges.

SECTION 109 - MEASUREMENT AND PAYMENT

109.01 Measurement of Quantities.

Measurements will be made according to the United States customary English units.

The method of measurement and computations to be used in determination of quantities of Work performed under the Contract are those methods generally recognized as conforming to good engineering practice.

Longitudinal measurements for area computations are made horizontally and deductions are not made for individual fixtures having an area of 9 square feet or less. Transverse measurements for area computations are the neat dimensions shown on the Plans or ordered in writing by the Engineer.

In computing volumes of excavation, methods outlined in Section 105.11 and 201.07 shall be used.

Materials measured by volume in the barge are measured at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided that the body is of such shape that the actual contents may be readily and accurately determined.

The term "lump sum" when used as a basis of payment means complete payment for the Work of that item, and that item will not be measured.

Whenever the phrase "quantity in the Proposal" is used in this Subsection, it is construed to mean the quantity in the Proposal adjusted for Change Orders.

109.02 Scope of Payment.

The Contractor shall receive and accept the compensation provided for in the Contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to complete the Work, and for performing all Work contemplated and embraced under the Contract in a complete and acceptable manner. Except where specifically provided elsewhere in the Contract Documents, compensation shall encompass full payment for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof, or for the action of the elements, or for any unforeseen difficulties that may be encountered during the prosecution of the Work until Acceptance. Also, except where specifically provided elsewhere in the Contract Documents, compensation shall include full payment for all expenses incurred as a result of the suspension or discontinuance of the Work as provided in the Contract.

The "Basis of Payment" clause in the Specifications relating to any Pay Item in the proposal encompasses all compensation for work essential to that Pay Item. Work essential to that Pay Item will not be measured or paid for under any other Pay Item in the Contract Documents unless it is stated in the "Basis of Payment" clause for that Pay Item that a portion of the Work will be paid for under another Section or Subsection of the Specifications.

109.03 Force Account Payment.

Where the Contractor and the Engineer cannot negotiate a Supplementary Agreement for Extra Work, or for Work designated to be Force Account payments elsewhere in the Contract Documents, the Department may require the Contractor to do such Work on a Force Account basis and be compensated as provided in this Subsection.

The total costs for labor, materials, equipment, bonds, insurance, and tax as provided below, together with applicable markups constitute full compensation for all direct and indirect costs (including overhead) and profit, and are deemed to include all items of expense not specifically designated. Any adjustments to Performance Bond and Payment Bond will be made as provided in [Subsection 103.05](#).

When forces other than the Contractor's organization perform Work that is paid on a Force Account basis, the Contractor shall reach an agreement with such other forces as to the distribution of payments made by the State for such Work. Therefore, additional payment will not be made by reason of the performance of the Work by a subcontractor or other forces.

It is understood that Force Account payments pursuant to the terms of the Contract are contractual in nature only and are not to be used for any other purpose. More specifically, but not by way of limitation, the Force Account provisions of this Contract are not to be used to prove damages in a court of law in an action for breach of Contract pursuant to the provisions of the New Jersey Contractual Liability Act.

Force Account payment will be based on the following:

- 1. Labor.** For all necessary labor and foremen in direct charge of the specific operations, whether the employer is the Contractor, subcontractor, or another, the Contractor shall receive the rate of wage (or scale) actually paid as shown in its certified payrolls for each and every hour that said labor and foremen are actually engaged in such Work.

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

2. **Bond, Insurance, and Tax.** For bond premiums; property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; and social security taxes on the Force Account work, the Contractor shall receive the actual incremental cost thereof, necessarily and directly resulting from the Force Account work. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and tax.

Payment for Performance Bond and Payment Bond will be as provided in [Subsection 103.05](#).

3. **Materials.** The Department reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no claims for costs and markup on such materials.

Only materials furnished by the Contractor and necessarily used in the performance of the Work will be paid for. Sales tax will not be paid on materials that qualify for an exemption under the Sales and Use Tax Act and the regulations issued thereunder, regardless of whether the exemption is used. The cost of such materials shall be the cost to the purchaser, whether Contractor, subcontractor, or other forces from the supplier thereto, together with transportation charges actually paid by it, except as follows:

- a. If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the State notwithstanding the fact that such discount may not have been taken.
 - b. If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to such purchaser, the cost of such materials shall be the price paid to the actual supplier as determined by the Engineer, plus the actual costs, if any, incurred in the handling of such materials.
 - c. If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of such materials shall not exceed the price paid by the purchaser for similar materials furnished from said source on Pay Items or the current wholesale price for such materials delivered to the job site, whichever price is lower.
 - d. If the cost of such materials is, in the opinion of the Engineer, excessive, then the cost of such materials shall be the lowest current wholesale price at which such materials are available in the quantities concerned, delivered to the job site, less any discounts as provided in Item a above.
 - e. If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof, the cost will be determined according to Item d above.
4. **Equipment and Plant.**

- a. **Contractor Owned Equipment and Plant.** The hourly rates for Contractor owned equipment and plant will be determined from the applicable volume of the Rental Rate Blue Book (referred to hereafter as the "Blue Book"), published by Intertec Publishing, a Primedia Company, 1735 Technology Drive, Suite 410, San Jose, California 95110.

The Blue Book will be used in the following manner:

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

(8) The rates established above include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs, overhaul and maintenance of any kind, depreciation, storage, overhead, profits, insurance, all costs (including labor and equipment) of moving equipment or plant to, on, and away from the site, and all incidentals.

(9) Operator costs will be paid only as provided in Subheading 1 above.

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

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

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

b. Rented Equipment and Plant. In the event that the Contractor does not own a specific type of equipment or plant and must obtain it by rental, the Contractor shall inform the Resident Engineer of the need to rent the equipment and of the rental rate for that equipment before using it on the Work. The Contractor will be paid the actual rental for the equipment for the time that the equipment is actually used to accomplish the Work, provided that rate is reasonable, plus the cost of moving the equipment to, on, and away from the Project site. The Contractor shall provide a copy of the paid receipt or canceled check for the rental expense incurred.

5. Profit. Profit shall be computed at ten percent of the following:

- a. Total material cost (bare cost F.O.B.).
- b. Total direct labor cost (actual hours worked multiplied by the regular hourly rate).
- c. Total fringe benefits on total direct labor cost as computed above.

6. Overhead. Any and all overhead for the Contractor is defined to include the following:

- a. All salaries and expenses of executive officers, supervising officers, or supervising employees;
- b. All clerical or stenographic employees;
- c. All charges for minor equipment, such as small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, and other miscellaneous supplies and services; and
- d. All drafting room accessories such as paper, tracing cloth, and blueprinting.

Any and all overhead costs of the Contractor for Force Account work shall be computed at 15 percent of the following:

- a. Total material cost (bare cost F.O.B.).
- b. Total direct labor cost (actual hours worked multiplied by the regular hourly rate).
- c. Specific extraordinary overhead expenses, such as hiring of additional supervisory personnel or the use of special minor equipment (as defined above), which the Contractor has to purchase specifically for the Force Account, may be allowed. In such instances, the Contractor will be paid only the reasonable costs of such extraordinary overhead expenses provided the Engineer has agreed to such costs before their being incurred.
- d. Total fringe benefits on total direct labor cost as computed above.

The Contractor will be allowed an additional five percent for overhead on the total amount of all work performed by the subcontractors.

7. Records. The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work paid for on a Force Account basis and the costs of other operations.

From the above records, the Contractor shall furnish to the Engineer completed daily Force Account work reports for each day's work to be paid for on a Force Account basis. Said daily Force Account work

reports shall be signed by the Contractor and submitted daily. The daily Force Account work reports shall be detailed as follows:

- a. Name, classification, date, daily hours, total hours, rate, and extension for each worker and foreman.
- b. Designation, dates, daily hours, total hours, rental rate (including a copy of the Blue Book pages used), and extension for each unit of machinery and equipment.
- c. Quantities of materials, prices, and extensions.
- d. Transportation of materials.
- e. Cost of bonds; property damage, liability, and workers compensation insurance premiums; unemployment insurance contributions; and social security taxes.

Material charges shall be substantiated by valid copies of vendor's invoices. Such invoices shall be submitted with the daily Force Account work reports, or if not available, they shall be submitted with subsequent daily Force Account work reports. Should said vendor's invoices not be submitted within 60 days after the date of delivery of the material, or within 15 days after the Completion, whichever occurs first, the Department reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials are available, in the quantities concerned, delivered to the location of Work, less any discounts provided in Subheading 3.a above.

The Engineer's records will be compared with the completed daily Force Account work reports furnished by the Contractor, and any necessary adjustments will be made. When these daily Force Account work reports are agreed upon and signed by both parties, said reports become the basis of payment for the work performed but do not preclude subsequent adjustment based on a later audit by the Department.

The Contractor's cost records pertaining to work paid for on a Force Account basis shall be open to inspection or audit by representatives of the Department, during the life of the Contract and for a period of not less than three years after Acceptance thereof, and the Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to forces other than the Contractor, the Contractor shall ensure that the cost records of such other forces are open to inspection and audit by representatives of the Department on the same terms and conditions as the cost records of the Contractor. If an audit is to be commenced more than 60 days after Acceptance, the Contractor will be provided a reasonable notice of the time when such audit is to begin. In case all or a part of such records are not made so available, the Contractor understands and agrees that any items not supported by reason of such unavailability of the records will not be allowed, or if payment therefore has already been made, the Contractor shall refund to the Department the amount so disallowed.

109.04 Payment for Contractor's Expenses During Delays.

The Department and the Contractor shall agree as to the date on which dredging will commence. If the Engineer finds because of conditions beyond the control and not the fault of the Contractor for the agreed start or continued prosecution of the dredging is delayed, the Contractor will be paid its expenses during that period of delay as provided herein. The time the Contractor is directed by the Engineer to temporarily stop work will be considered as standby time. Standby time will be measured from the time the Engineer directs the Contractor to temporarily stop work until the time the Engineer directs the Contractor to resume work. The time for which hourly compensation will be paid is the actual normal working time during which such delay condition exists, which in no case exceeds twelve hours in any one day. Records of a running tally shall be kept summing all standby time, including all hours and portions of hours. The quantity for hourly standby time will be rounded to the nearest whole hour. Daily standby time will be paid when the actual normal working time during which such delay condition exists, exceeds twelve hours in any one day.

Payment will be made under:

<i>Pay Item</i>	<i>Pay Unit</i>
HOURLY STANDBY TIME	MANHOUR
DAILY STANDBY TIME	DAY

Payment under this Subsection constitutes full compensation for all items of expense related to such delays including labor, equipment, insurance, profit, and other and miscellaneous expenses. No other claims related to delay will be considered. Payment will be made according to the time records regarding the delay maintained by the Department, unless otherwise agreed to by the parties. No payment under this subsection shall be made for any delay unrelated to the dredging activity.

109.05 Partial Payments.

Monthly estimates will be made of the approximate quantities of Work satisfactorily performed according to the Contract Documents during the preceding month. Partial payments on account of such monthly estimate will be made based on the prices bid in the Proposal or as provided by Field Order, Change Order, or Supplementary Agreement. The Contractor is also to be paid under the monthly estimates for materials delivered according to [Subsection 109.06](#).

Before the issuance of each monthly payment before Substantial Completion, the Contractor shall certify, on forms provided by the Department, that:

1. Each subcontractor or supplier has been paid any amount due from any previous progress payment and shall be paid any amount due from the current progress payment; or
2. There exists a valid basis under the terms of the subcontractor's or supplier's contract to withhold payment from the subcontractor or supplier, and therefore payment is withheld.

Additionally, whenever the certification indicates that payment has been or will be withheld from a subcontractor or supplier, the Contractor shall, according to PL 1991, c.507, provide written notice of such non-payment to the subcontractor or supplier and shall provide to the Department, and to the Bonding Company providing the Performance Bond for the Contractor, a copy of the written notice of withholding of payment required by PL 1991, c.507. The notice shall detail the reason for withholding payment and state the amount of payment withheld.

PL 1991, c.507 authorizes any subcontractor or supplier from whom payment is withheld to receive from the Contractor, in addition to any amount due, interest at a rate equal to the prime rate plus one percent if the subcontractor or supplier is not paid within ten Calendar Days after receipt by the Contractor of payment by the State for completed work that is the subject of a subcontract or a material supply agreement and if no valid basis exists for withholding payment. This interest shall begin to accrue on the tenth Calendar Day after receipt of payment by the Contractor. In addition, if court action is taken by a subcontractor or supplier to collect payments withheld by a Contractor, the prevailing party shall recover its court costs from the party against whom judgment is rendered.

Pay Items that are on a lump sum basis will not be measured. However, payment for such items will be included in partial payments consistent with the provisions of the Subsection describing the Work under the lump sum Pay Item. Where the method of payment is not described under the Subsection describing the Work of the lump sum Pay Item, partial payment will be made based on an approximation of the proportionate value of the Work satisfactorily performed to date.

Partial payment will not be made when the monthly estimate shows the total Work and delivered materials payable since the preceding monthly estimate to be less than \$1,000, unless the Contractor requests in writing that such payment be made.

From the total amounts ascertained as payable, an amount equivalent to five percent of the amount due on the first 50 percent of the total adjusted Contract price will be deducted and retained pending Substantial Completion. On the remaining 50 percent of the total adjusted Contract price, no percentage of the partial payments is withheld as retainage. Any amounts paid to the Contractor in the form of incentive payments for early Completion and positive pay adjustments will not be included in the adjusted Contract price when calculating retainage.

Such estimate or payment will not be made when, in the judgment of the Engineer, the Work is not proceeding according to the Contract Documents or following the Commissioner giving the Contractor and surety notice of delay, neglect, or default under [Subsection 108.17](#).

Such estimate or payment shall not be construed to be an approval of any defective or improper Work. The Engineer upon determining that any payment under a previous monthly estimate was improper or unwarranted for any reason may deduct the amount of such payment from the subsequent monthly estimate and partial payments made to the Contractor.

The Department will deduct from any monthly estimate and payment and/or the final payment such amounts as are required to be deducted pursuant to provisions of the Contract Documents.

109.06 Materials Payments. This Subsection is intentionally left blank

109.07 Payments Following Substantial Completion.

Following Substantial Completion of the Contract according to [Subsections 101.03](#) and [105.22](#), partial payments to the Contractor will be made only upon certification by the Contractor to the Department, on forms provided by the Department, that:

1. Each subcontractor or supplier has been paid all amounts due from all previous progress payments and shall be paid all amounts due from the current progress payment; or
2. There exists a valid basis under the terms of the subcontractor's or supplier's contract to withhold payment from the subcontractor or supplier, and therefore payment is withheld.

Additionally, whenever the certification indicates that payment has been or will be withheld from a subcontractor or supplier, the Contractor shall according to PL 1991, c.507, provide written notice of such non-payment to the subcontractor or supplier and shall provide to the Department, and to the Bonding Company providing the Performance Bond for the Contractor, a copy of the written notice of withholding of payment required by PL 1991, c.507. The notice shall detail the reason for withholding payment and state the amount of payment withheld.

PL 1991, c.507 authorizes any subcontractor or supplier from whom payment is withheld to receive from the Contractor, in addition to any amount due, interest at a rate equal to the prime rate plus one percent if the subcontractor or supplier is not paid within ten Calendar Days after receipt by the Contractor of payment by the State for completed work which is the subject of a subcontract or a material supply agreement and if no valid basis exists for withholding payment. This interest shall begin to accrue on the tenth Calendar Day after receipt of payment by the Contractor. In addition, if court action is taken by a subcontractor or supplier to collect payments withheld by a Contractor, the prevailing party shall recover its court costs from the party against whom judgment is rendered.

In the first estimate following Substantial Completion, the Department will reduce retainage to two percent of the total adjusted Contract price unless it has been determined by the Commissioner that the public interest requires the withholding of additional retainage. If retainage is held in cash withholdings, the reduction is to be accomplished by payment under the next partial payment. If retainage is held in bonds, the Department will authorize a reduction in the escrow account.

All monies retained subsequent to the first estimate following Substantial Completion may be released as specified in Subsection 109.11.

109.08 Bonds Posted in Lieu of Retainages.

The Contractor may elect to deposit negotiable bonds of the State or any of its political subdivisions, which have been approved by the Commissioner, in an escrow account to secure release of all or a portion of the retainage held under the provisions of [Subsection 109.05](#). Such account shall be established under the provisions of an escrow agreement to be entered into between the Contractor, the Department, and a bank located in the State which is an authorized depository of the State and which has a trust department.

The agreement forms and a list of approved bonds may be obtained from the Department's Bureau of Construction Services. The bonds shall have a rating of at least "B A A" by Moody's Investor Service or "B B B" by Standard and Poors Corporation. Bonds having a lower rating are not acceptable to the Department.

The par value or market value of said bonds, whichever is lower, must be equal to the amount of money being released to the Contractor. If the market value of the bonds on deposit in the escrow account falls below the amount of retainage required by the Contract, the Contractor shall place in the escrow account additional bonds of sufficient value to secure the release of all retainage, or the Department will deduct from current payments amounts sufficient to ensure that the total bond value on deposit plus retainage withheld will equal the total retainage requirement for the Contract.

All bonds deposited in the escrow account to secure the release of retainage must remain acceptable to the Department while they are in the escrow account. The Contractor shall replace any of the bonds held in the escrow account, whenever those bonds decline in rating below the rating required for bonds to be acceptable. Unless the Contractor replaces the unacceptable bonds with acceptable bonds, the Department will withhold from future payments amounts equal to the amount of retainage, the release of which was based upon the value of the now unacceptable bonds.

In the event of a default or termination of the Contract, the Commissioner will notify the bank in writing of such default or termination. Following written notification of default or termination, the bank shall not dispose of, release, or compromise any bonds or the proceeds of called or mature bonds, without written instructions from the Commissioner. If directed by the Commissioner, the bank shall sell any bonds in the escrow account and pay the proceeds of such sale or the proceeds held in the account from called or matured bonds to the Department or to any payee designated by the Commissioner. A copy of the instructions to sell will be sent to the Contractor by certified mail.

The Contractor shall pay any and all charges of the bank for services rendered according to the terms and conditions of the escrow agreement.

109.09 Payment Following Acceptance.

All Partial payments by monthly estimate will be processed prior to acceptance. Final payment will be made as specified in Subsection 109.11.

109.10 As-Built Quantities.

Following Substantial Completion, the Engineer will finalize as-built quantities for all Pay Items and for Extra Work that has been authorized and incorporated into the Project. The Contractor shall assume the positive obligation of assisting the Engineer in the preparation of such as-built quantities at no extra cost. The Contractor shall have 20 days, from receipt thereof, to accept or reject the proposed final as-built quantities. If the Contractor rejects, the Contractor

must submit, together with a notice of rejection, the proposed changes and supporting calculations within said 20-day period. Where the Contractor fails to respond or fails to provide supporting calculations, together with a notice of rejection, within the aforesaid 20-day period, such failure will be construed to be acceptance of the as-built quantities. However, the Engineer will review supporting calculations properly received from the Contractor according to this Subsection, within 20 days, and will accept or reject, in part or in whole, the proposed changes to the as-built Quantities. The Engineer has the discretion to extend the Contractor's 20-day response period, but only upon receipt of a written request from the Contractor, submitted within the aforesaid 20-day period. After the Contractor's acceptance, expiration of the aforesaid 20-day period and any properly granted extensions, or after review of any properly submitted proposed changes; final as-built quantities will be incorporated into a proposed Final Certificate. A claim based upon proposed changes to the as-built quantities that have not been accepted by the Resident Engineer, but which were supported by calculations and submitted within the aforesaid 20-day period, may be reserved by the Contractor according to [Subsection 109.11](#). In addition, the provision of [Subsection 109.01](#) shall also govern.

The Engineer may from time to time, before Substantial Completion, prepare as-built quantities and incorporate these quantities into monthly estimate certificates through an appropriate Field Order or Change Order. Such interim as-built quantities are subject to recalculation in completion of the Final Certificate. However, nothing contained in these Specifications shall be construed to place on the Engineer the obligation of providing the Contractor with as-built quantities for the Work performed before the issuance of the proposed Final Certificate, nor to provide more than rough, approximate quantities of the Work done for use in the preparation of monthly estimates.

109.11 Final Payment and Claims.

- 1. Final Certificate.** All prior estimates and payments made by the Department are subject to correction in the Final Certificate, which will be completed as follows:
 - a. After Acceptance is completed as specified in Subsection 105.23 and the As-Built quantities finalized, the Department will make an estimate of the total amount of Work done under the Contract, and prepare and issue the Final Certificate to the Contractor.
 - b. Within 30 State Business Days after said Final Certificate has been issued to the Contractor, the Contractor shall submit to the Department either a written acceptance of the Final Certificate without exception together with an executed release in the form provided with the Final Certificate or a written acceptance of the Final Certificate with a reservation of specific claims, but otherwise releasing all claims not specifically reserved, by executing a conditional release in the form provided with the Final Certificate. The Contractor's failure to submit any written acceptance or acceptance with reservation within said 30 days will be construed by the Department as an acceptance by the Contractor of the Final Certificate without exception or reservation of Claims.
 - c. Upon receipt of the Contractor's written acceptance of the Final Certificate with unconditional or conditional release, or when the Contractor fails to provide any written acceptance of the Final Certificate within 30 State Business Days of issuance, the Department will pay the entire sum due thereunder as provided by the New Jersey Prompt Payment Act NJSA 52:32-32 *et seq.*, provided the Final Certificate indicates a payment is due the Contractor. However, where the Final Certificate indicates a Credit (payment) is due the Department, the Contractor shall remit said Credit (payment) to the Department in the amount set forth in the Final Certificate.
 - d. If the Contractor fails to remit the Credit (payment) due the Department, as indicated on the Final Certificate, within 30 State Business Days of issuance of the Final Certificate, the Department may pursue all legal means available to recover the amount due the State, including but not limited to, deducting the amount from payment due the Contractor on this or other Department Contracts or from retainage and/or the sale of bonds held in lieu of retainage for the Contract or for other Contracts, even where the credit is being contested by the Contractor.

Neither the failure of the Contractor to accept the tendered Final Payment nor the failure of the Contractor to remit the credit (payment) due the Department shall affect when the "Completion of the Contract" shall be deemed to have occurred for any reason. Where there is a remaining monetary balance due to the Contractor by the Department, Final Payment will be made after the "Completion of the Contract". Retainage shall be released to the Contractor upon completion of the contract unless a credit (payment) is due to the Department, which shall be deducted or adjusted in accord with the Specifications.

2. Conditions for Claims. Conditional acceptance of the Final Certificate will be permitted only where all of the following are met:

- a. When the Contractor submits a Release conditioned with exception or reservation, the release shall state the specific monetary amounts and category of the claims being reserved. The Contractor

acknowledges, by the act of executing the contract, that the failure to state specific monetary amounts and specific categories shall result in a waiver of such claims lacking as to amounts or specific categories thereof. The Contractor may reserve only those claims properly filed with the Department pursuant to Subsection 107.02 and not previously resolved. The Contractor waives all claims for which the required notice has not been filed with the Department.

- b. The Contractor further understands and agrees, by the act of executing the Contract that neither the procedures established under this Subsection nor the review of claims by the Department pursuant hereto shall in any way modify the requirements applicable to the filing of a Contractual Notice Form or the filing of a suit pursuant to the provisions of N.J.S.A. 59:13-1 *et seq.* .
- c. If the Contractor conditions its acceptance of the Final Certificate by reserving particular claims, the Contractor shall at the same time state in writing whether it would like to submit its reserved claims for review by the Department Claims Committee. Only those claims properly reserved, as provided for in Subsection 107.02, and which are unresolved after completing Steps I and II of the Contractual Claim Resolution Process for the resolution of contract claims, are eligible for review by the Department Claims Committee to the extent provided in that Subsection. If the Contractor states that it does not want Department Claims Committee review of the reserved claims or if it fails to request Department Claims Committee review of reserved claims when it conditions its acceptance of the Final Certificate or if it files suit in a court of law regarding those claims, the Contractor shall be deemed to have waived any ability to have its reserved claims reviewed by the Department Claims Committee.
- d. If the Contractor requests review of its reserved claims when it conditions its acceptance of the Final Certificate, it shall send at the same time a copy of its request for review to the Secretary of the Department Claims Committee, PO Box 600, Trenton, NJ 08625-0600. Department Claims Committee review will then take place according to Subsection 107.02.
- e. At the election of the Contractor upon completion of the Contract, claims that are unresolved after review by the Department Claims Committee may be submitted to Non-Binding Mediation according to Subsection 107.02.
- e. Interest shall neither be paid nor shall it accrue upon the amount of any additional compensation paid in resolution or settlement of a claim resolved through the various steps of the Contractual Claims Resolution Process.

109.12 Audits.

All claims filed are subject to audit at any time following the filing of such claim, whether or not such claim is part of a suit pending in the courts of this State pursuant to the New Jersey Contractual Liability Act. The audit may be performed by the State or by an auditor under contract with the Department. The audit may begin on ten days notice to the Contractor or its subcontractor. The Contractor, subcontractor, or supplier shall provide adequate facilities that are acceptable for such audit during normal business hours. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. Failure of the Contractor, subcontractor, or supplier to maintain and retain sufficient records to allow the Department's auditor to verify all or a portion of such claim to the books and records of the Contractor, subcontractor, or supplier shall constitute a waiver of such claim and shall bar any recovery thereunder.

As a minimum, the auditors shall have available to them the following documents unless their availability is otherwise limited by the custody agreement provided for in [Subsection 103.06](#):

1. Daily time sheets and foreman's daily reports.
2. Union agreements.
3. Insurance, welfare, and benefits records.
4. Payroll registers.
5. Earnings records.
6. Payroll tax forms.
7. Material invoices and/or requisitions.
8. Material cost distribution worksheet.
9. Equipment records (list of company equipment and rates).
10. Vendors', rental agencies', and subcontractors' invoices.
11. Subcontractors' payment certificates.
12. Canceled checks (payroll and vendors).
13. Job cost report.
14. Job payroll ledger.

15. General ledger.
16. Cash disbursements journal.
17. Financial statements for all years reflecting the operations on the Project.
18. Income tax returns for all years reflecting the operations on the Project.
19. Depreciation records on all company equipment whether such records are maintained by the company involved, or its accountant, or others.
20. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
21. All documents which reflect the Contractor's actual profit and overhead during the years the Project was being performed and for each of the five years before the commencement of the Project.
22. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based.
23. All documents that relate to each and every claim together with all documents which support the amount of damages as to each claim.
24. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents which establish the time periods, individuals involved, and the hours and rates for these individuals.

109.13 Contractor's Compliance with NJSA 34:11-56.25 et seq.

Before the proposed Final Certificate will be issued, the Contractor and subcontractors shall furnish the Engineer with written statements in a form satisfactory to the Comptroller of the Department certifying to the amounts then due and owing from the Contractor and subcontractors filing such statement to any and all workers for wages due on account of the Contract. The statements shall contain the names of the persons whose wages are unpaid and the amount due to each respectively. The statements shall be verified by the oath of the Contractor or subcontractor, as the case may be, that said party has read such statement subscribed by it, that said party knows the contents thereof, and that the same is true of its own knowledge. Nothing contained herein shall impair the right of the Contractor to receive Final Payment because of failure of any subcontractor to comply with provisions of this Subsection.

109.14 Warranty Against Defective Work.

In addition to any other rights or remedies the Department may have against the Contractor, its officers, employees, agents, subcontractors, fabricators, and suppliers under other provisions of the Contract Documents or as are otherwise allowed in law or equity, the following rights, remedies, and obligations are imposed by this Subsection:

1. On all Projects, all subcontractors', manufacturers', fabricators', and suppliers' warranties, express or implied, respecting any work or materials shall, at the direction of the Engineer, be enforced by the Contractor for the benefit of the State. The Contractor shall obtain any warranties that subcontractors, manufacturers, fabricators, and suppliers would give in normal commercial practice. If directed, the Contractor shall require any such warranty to be executed in writing to the Department. The Engineer may direct the Contractor to undertake litigation to enforce any warranty. Litigation directed to be brought during the life of the Contract and until one year following Acceptance (whether actually instituted within this period or not) shall be at the Contractor's expense. Litigation directed to be instituted after one year following Acceptance will be at the Department's expense.
2. The Contractor shall warrant that work performed conforms to the Contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of its subcontractors, fabricators, or suppliers at any tier. Such warranty shall continue for a period of one year following Acceptance. Under this warranty, the Contractor shall remedy at its own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at its own expense any damage to State owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to Contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to work repaired or replaced hereunder shall run for one year from the date of such repair or replacement.

The Engineer will notify the Contractor in writing of the discovery of any failure, defect, or damage. Should the Contractor fail to remedy any failure, defect, or damage described in the paragraph above, within 45 days after receipt of notice thereof, the Engineer will have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

3. Notwithstanding any other provision of this Subsection, unless such a defect is caused by the negligence of the Contractor or its subcontractors, fabricators, or suppliers at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Department nor for the repair of any damage that results from any such defect in Department furnished material or design.

109.15 Affidavit Concerning Gifts to Department of Transportation Employees, etc.

The Contractor shall not give any gifts of any nature, nor any gratuity in any form whatsoever, nor loan any money or anything of value to any Department employee, or relative or agent of any Department employee. The Contractor shall not rent or purchase any equipment or supplies of any nature whatsoever from any Department employee, or relative or agent of any Department employee. Similarly, such gifts, gratuities, loans, rentals, or purchases shall not be given to or made from any agent of the Department during the period of time that such agent is performing any function related in any way to the Project. Before receiving final payment, the Contractor shall execute, under oath, an affidavit, on forms provided by the Department, swearing that the Contractor has given no such prohibited gift, gratuities, or loans nor made any such prohibited rentals or purchases

DIVISION 200 - EARTHWORK

SECTION 201 - DREDGING

201.01 Description.

This work shall consist of performing environmental dredging of targeted sediments as shown on the Plans and transporting the dredged sediments to a designated decontamination facility.

201.02 Classification.

Dredged materials consist of all excavated materials of whatever character encountered, including hazardous sediment and debris. The Project site is classified as a portion of a Superfund National Priority List hazardous waste site by the EPA.

201.03 Backfill Material.

If the contractor overdredges as outlined in Section 201.05, the Contractor shall place 6 inches of backfill material as described by the Engineer as described below. Backfill shall be made with soil aggregate, designated as I-7, which shall be a natural or prepared mixture consisting of hard durable particles or fragments of free-draining stone, gravel, or sand. Stone shall be crushed or naturally angular particles of rock, a natural solid mineral matter occurring in large masses or fragments, which shall pass a 2-inch sieve and be retained on a No. 8 sieve. Stone shall be uniform in texture and quality, and shall conform to the following quality requirements:

	Maximum Percent
Weathered and decomposed stone	5
Broken stone other than that classification approved for use.....	5
Sodium sulfate soundness, loss	
Ledge rock	10
Graded sizes.....	10
Adherent fines in coarse aggregates	
HMA.....	0
Portland cement concrete.....	0

Sand shall be granular material resulting from weathering processes, grinding or crushing of rock and shall pass a No. 8 sieve and be retained on the No. 200 sieve.

Designation I-7 shall comply with the following gradation requirements:

Designation	Sieve Size										
	4"	2"	1"	¾"	½"	No. 4	No. 8	No. 16	No. 50	No. 100	No. 200
I-7			100		80-100		35-100	25-90	5-50	0-8	0-2

Gradations of aggregates are the percentages passing by weight.

The composite mixture of any type of soil aggregate specified herein shall be free from elements or chemicals which, in the presence of water, would produce detrimental effects to the environment, structures, or utility lines, and be free from organic matter, wood, garbage, metal, debris, or lumps of clay.

201.04 Equipment.

Mechanical dredging equipment designed specifically for removal of contaminated sediments shall be used for dredging and shall employ an environmental dredging system equipped with a bucket on a rope or cable, a bucket on a fixed-arm hydraulic excavator, or equivalent. The dredging bucket shall include a system to detect bucket closure. The dredging bucket shall incorporate features to maintain complete enclosure of sediments when the bucket is being raised through the water column and to reduce, to the maximum extent possible, the generation of suspended sediments during bucket lowering, closing and raising in the water column. In addition, the dredging equipment shall be capable of removing contaminated sediments at near in-situ densities. The dredge shall be equipped with RTK DGPS controls such as WINOPS, or HYPACK, or approved equal, to enable accurate positioning of the dredge bucket. The dredge bucket shall have a positioning tolerance of plus or minus two inches vertically and plus or minus three inches horizontally. The

dredge and its associated floating platform shall be operated so as to maintain a minimum hull clearance of two feet above the Passaic River mudline. The dredging plant shall be capable of dredging a minimum of one thousand cubic yards of targeted sediments in a twelve-hour working day. The bucket size shall be no more than 8 cy.

During the course of the Work, the Contractor shall maneuver or reposition the dredging plant in a manner that minimizes sediment resuspension to the maximum extent possible. Methods that avoid the use of towboats are preferred. Dredged sediments shall be discharged into previously cleaned, empty barges or scows, which shall be used to transport the sediments to the designated decontamination facility. Cleaning will not be required after the first barge load has been transported to the sediment decontamination facility. Cleaning will be required at the conclusion of the project. Barges shall be leak tight hopper-type or equal. Split hull barges will not be permitted. The Contractor shall provide a sufficient number of barges to maintain continuity of dredging operations, taking into account its agreement with the decontamination facility for turnover time. For each hour dredging operations are delayed or disrupted due to the lack of an available acceptable barge, the Contractor shall pay liquidated damages to the State in the amount of \$5,000.

Towboats shall have adequate engine capacity to enable efficient transport of loaded barges to the decontamination facility. The configuration of the towboat propulsion system shall be such that sediment resuspension is minimized. The Contractor's operations shall be planned so as to control, to the maximum extent practicable, sediment resuspension caused by towboat maneuvering.

The Contractor shall coordinate bridge openings as necessary for access and to accommodate equipment. The New Jersey Turnpike Bridge over the Passaic River is a fixed bridge with a horizontal clearance of 319 feet and a vertical clearance of 100 feet at high water. The Point-No-Point Bridge carrying Conrail over the Passaic River is a swing bridge with a horizontal clearance of 103 feet and a vertical clearance of 16 feet at high water when closed. A minimum of four hours advance notice is required to open the bridge.

201.05 Construction Requirements.

The Contractor has the option of conducting debris removal operations prior to dredging. Debris shall be disposed of according to Subsection 201.06. The Contractor shall provide the Engineer with the detailed technical approach for conducting debris removal and notify and coordinate with the Engineer at least 15 days in advance of debris removal activities. The Department intends to conduct full water column monitoring operations during debris removal to measure suspended sediments.

The Contractor shall handle all debris and dredged material in a manner that protects site personnel, the public and the environment in accordance with all applicable federal, state, and local laws and regulations according to Subsection 107.03. The Contractor shall not allow discharge or overflow of water or other materials from barges.

The Contractor shall conduct dredging operations for a maximum of twelve hours each day. Dredging shall be conducted on consecutive days at an approximate rate of 1,000 cubic yards per day. Minor deviations in the daily production rate will be acceptable as approved by the Engineer provided the requirement of completing dredging operations within five consecutive days is achieved and all of the permit conditions are met. The Contractor shall modify dredging operations at any time as directed by the Engineer. Dredging shall be performed in a manner as to minimize the generation of suspended sediments and minimize generation of residual sediments, while maintaining the required production rate. Specifically, the Contractor shall rinse the bucket between dredging cycles in order to minimize the resuspension of sediment in the water column. Other measures such as use of an apron or tray alongside the barge to catch fallback off the bucket shall be used as necessary. Under no conditions should the dredge bucket be lowered or buried to elevations below the targeted dredge cut line. The Department will perform sampling in the immediate vicinity of the dredge during two of the five days of active dredging activities. The Contractor shall provide the Engineer access to the dredging plant according to Subsection 105.14. The Contractor's operations shall accommodate the Engineer in performing the sampling. Additionally, the Contractor shall provide the necessary support, including manpower assistance and electricity, for the Department to perform the sampling.

The Contractor shall provide the Department with time-stamped digital video and time-stamped still photographic documentation of the entire environmental dredging operation. Three sets of digital video in AVI format shall be submitted. A log shall be kept which identifies the location, direction and subject of each photograph. Three sets of original photographs with dates and three copies of the log shall be provided in each of three loose-leaf binders with negatives of the photos. All video and photographic documentation shall be provided to the Engineer within two weeks of completing dredging operations. Underwater videos and photographs are not required. A detailed log of the dredging operation is required and must be submitted.

Prior to transporting the sediments, the Contractor shall wash materials accumulated on equipment into the barge hopper. Discharge of sediments that accumulate on equipment into any waterway will not be permitted.

Dredged material shall not be transferred from one barge to another until it is offloaded at the decontamination facility. The decontamination facility will offload the materials. The Contractor shall make its own arrangements with

the decontamination facility for pick up of the empty and cleaned barge. Claims for additional compensation shall not be made against the State because of the failure of the decontamination facility to meet the terms of the arrangement between the Contractor and the decontamination facility.

The Contractor shall furnish to the Engineer four copies of a daily report of dredging activities for each day's work. The report shall be submitted to the Engineer by 9:00 am on the following day and shall be signed by the Contractor's employee responsible for the Work. The daily report shall include the following information.

1. An estimate of the volume of contaminated sediment removed during each hour of the working day and the number of scows or barges filled and transported from the site each day.
2. Coordination or scheduling concerns, requests for clarifications or information, discrepancies between the Plans, Specifications, or other Contract Documents, discrepancies between field conditions or as-built conditions and a discussion of problems resulting in delays including the anticipated length of the delays and countermeasures.
3. The amount of standby time according to Subsection 109.04.
4. Information including dredge operation/cycle time, debris/material loss, dredge relocation, scow and tug movements and non-project vessel passage.
5. The daily workforce by craft, the general weather conditions, other items pertinent to the Work, and other information requested by the Engineer.

All operations that are performed during the non-daylight hours shall be properly illuminated to allow for the complete performance and inspection of the work. This work shall consist of furnishing, installing, operating, maintaining, moving, and removing portable light towers and equipment-mounted lighting fixtures for nighttime construction operations, for the duration of nighttime work on the Contract. Nighttime operations consist of work specifically scheduled to occur after sunset and before sunrise.

The Contractor shall provide lights conforming to USCG requirements for all plants, ranges, markers, buoys or other equipment installed or being used to perform the Work, even when not in use.

The Contractor shall perform hydrographic surveys necessary to control and monitor its operations according to Subsection 105.11. If survey results indicate in more than 20% of the area overdredging of 12 inches or greater, the Contractor shall backfill as directed by the Engineer at no cost to the State. The overdredged areas shall be backfilled with a minimum of 12 inches of fill and a maximum of 18 inches of fill. Backfill shall be placed in lifts of no greater than six inches. Backfill shall be placed by direct mechanical or hydraulic methods. During backfill operations, the Contractor shall take all necessary precautions to minimize resuspension of sediments. The Contractor shall take cores at a rate of one core per one thousand square feet of the backfilled area to demonstrate that the specified backfill thickness has been achieved. Where survey results indicate under-dredging of 6 inches or greater in more than 20% of the area, the Contractor may perform additional dredging as necessary to achieve the targeted dredge cut line elevations shown on the Plans.

The Contractor shall submit two copies of the project record documents in the form of a Completion Report. The report shall include a description of the work performed, the equipment and materials utilized, the order in which it was performed, the methods used, the debris removed and disposed of at approved and licensed facilities, the limitations encountered in performing the work, a summary of quantities, weather and tide conditions and outstanding issues. The Completion Report shall be submitted within 4 weeks of completion of field construction activities.

201.06 Disposal of Materials and Debris.

The disposal of debris is regulated under the Solid Waste Management Act (NJSA 13:1 E-1) and is governed by NJAC 7:26 *et seq.* The Contractor shall dispose of the debris according to the solid waste management plan developed by the solid waste management district of origin. Proper documentation from the disposal facility shall be submitted to the Engineer.

The Contractor shall transport dredged materials to the designated decontamination facility, Bayshore Recycling, as indicated on the Plans. The Contractor shall not deliver more than 5,000 cyd total to Bayshore Recycling as measured exsitu in the scow. The scow shall be held for 12 hours in order to allow for settling, prior to determination of the scow sediment volume. The decontamination facility will offload and transfer the transported materials to their own facilities, where the materials will be segregated. Debris shall be considered all materials retained on a screen with ¼-inch openings, as segregated by the decontamination facility. Debris segregated by the decontamination facility shall be disposed of by the Contractor as specified herein. Proper documentation from the decontamination facility shall be submitted to the Engineer.

201.07 Method of Measurement.

The State will perform pre-construction and post-construction hydrographic surveys. The pre-construction survey will be performed prior to initial debris removal by the Contractor, if any. Upon completion of the Contractor's operations, the State will perform a post-construction survey. The results of the two surveys will be considered the sole determination of dredging depth for acceptance and payment reductions. If any area is more than twelve inches deeper than the targeted dredging cut line elevations on the Plans, the Contractor shall backfill, as indicated, according to Subsection 201.05 at no cost to the State.

Dredging will not be measured and payment will be made on a lump sum basis, subject to the following payment reductions:

1. Full payment will be made if at least 90 percent of the area indicated on the Plans is within plus or minus six inches of the targeted dredging elevations on the Plans.
2. A reduced payment of 90 percent of the price bid will be made if at least 80 percent of the area indicated on the Plans is within plus or minus six inches of the targeted dredging elevations on the Plans.
3. Payment will not be made if less than 80 percent of the area indicated on the Plans is within plus or minus six inches of the targeted dredging elevations on the Plans.
4. Additional dredging may be performed by the Contractor as necessary. However, the Contractor is responsible for the costs of disposal at the decontamination facility for management of material in excess of 5,000 cyd (as measured exsitu in scow).

If there is a discrepancy between the Contractor's survey and the State's survey, either the Engineer or the Contractor may request that the State perform an additional post-construction survey. This survey and the State's pre-construction survey will be considered the final survey for determining payment reductions. If the Contractor requests the additional survey, then based on the final survey, if the total area with targeted depths within plus or minus six inches of the targeted dredging elevations is within five percent of the State's initial assessment, the Contractor shall pay the State for the cost of the post-construction survey. If the total area with targeted depths within plus or minus six inches of the targeted dredging elevations differs from the State's initial assessment by more than five percent, there will be no charge for the survey.

201.08 Basis of Payment.

Payment will be made under:

PAY ITEM	PAY	UNIT
MOBILIZATION/DEMobilIZATION	LUMP SUM	
CONTRACTOR HYDROGRAPHIC SURVEYS	LUMP SUM	
DREDGING 5000 CY	LUMP SUM	
BARGE TRANSPORT	LUMP SUM	
DEBRIS REMOVAL	LUMP SUM	
PLACING BACKFILL	LUMP SUM	