

Section 107. LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

107.01. Laws to be Observed. The Contractor must be familiar with all state and federal laws, rules, executive orders, regulations, agricultural quarantines, local ordinances, and State Administrative Board resolutions that are current at the date of the advertisement and that supplement the contract or affect the equipment and materials used in the proposed construction, those employed on the work, and the conduct of the work. The Contractor must hold harmless and indemnify the Department and its representatives against any claim arising from any violation.

It is the Contractor's responsibility to determine what the laws require and then, at the sole expense of the Contractor, to perform the work required by the contract in whatever manner may be necessary to comply with all applicable laws. The Contractor is liable to the Department for fines, remediation, or environmental response costs incurred by the Department because of the Contractor's failure to comply with federal, state, and local laws.

It is the Engineer's right to shut down affected operations if the Contractor does not comply with the applicable laws. The Engineer also has the right to direct the Contractor to implement immediate remedial action to bring the affected operations into compliance. The Contractor is not entitled to a time extension or compensation for delays, inconvenience, or any other cause attributed to the Engineer suspending the work or directing remedial actions to bring the affected operations into compliance with the applicable laws.

Pursuant to 1976 PA 453 Elliot-Larsen Civil Rights Act, the Contractor agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. The Contractor further agrees that every subcontract entered for the performance of the contract will contain a provision requiring nondiscrimination in employment binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the contract.

Pursuant to 1976 PA 220 Persons with Disabilities Civil Rights Act, the Contractor agrees not to discriminate against an employee or applicant

107.01

for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability unrelated to the individual's ability to perform the duties of a particular job or position. The Contractor further agrees that every subcontract entered for the performance of the contract will contain a provision requiring nondiscrimination in employment binding upon each subcontractor. Breach of this covenant will be regarded as a material breach of the contract.

Pursuant to the Davis-Bacon and Related Acts contained in 29 CFR, Parts 1, 3 and 5 and 1965 PA 166 Prevailing Wages on State Projects, the Contractor must comply with all labor compliance provisions in the contract and as specified in the current written Department procedures for prevailing wage compliance oversight.

107.02. Permits and Licenses. The Contractor must obtain and pay for permits and licenses required by the contract and necessary for the lawful prosecution of the work, unless otherwise issued to or by the Department.

A. Reimbursement of Fees. The Department will reimburse the Contractor for the following:

1. Permit fees required by local government agencies to construct work as required by the contract; and
2. That portion of deposits or cash bonds required by local government agencies charged for inspection fees.

B. Environmental Permits. The Contractor must follow the requirements outlined in the permits issued to the Department. If the proposed work or work methods necessitate a change in conditions for permits issued under the following provisions, the Contractor must provide a written request to the Engineer to change the permits issued under either of the following:

1. 1994 PA 451 Natural Resources and Environmental Protection Act:
 - a. Part 31, Water Resources Protection;
 - b. Part 31, National Pollutant Discharge Elimination System (NPDES);
 - c. Part 301, Inland Lakes and Streams; and
 - d. Part 303, Wetland Protection.
2. U.S. Army Corps of Engineers' Section 404, Dredge and Fill.

The Contractor must not proceed with the change until the Department provides written approval. The Department's approval of the change will

require internal coordination and the Contractor should therefore anticipate some delay. If the Department determines the requested change is detrimental to the environment, the Department will not submit a permit revision request to MDNRE. The Contractor is not entitled to a time extension or compensation for delays, inconvenience, or any other cause attributed to obtaining, or the inability to obtain, the permit changes, unless the need for the permit change was the result of a contract revision in accordance with subsection 103.02.

107.03. Patented Processes and Materials. The Contractor must defend all patent infringement suits resulting from the use of designs, devices, material, or processes employed to construct the work as required by the contract. The Contractor must hold harmless and indemnify the Department against suits or claims for royalties, damages, and costs.

The Contractor is responsible for submitting to the Engineer a written statement from the patentee or licensee for plans, not supplied by the Department, that embody the use of any patented process, device, or design. The statement must set forth the exact terms under which the plans are to be used and the fixed price for which the Contractor may use the plans, processes, devices, or designs without further liability.

107.04. Federal Aid Participation. If any federal laws, rules, or regulations conflict with any provisions of a federally assisted contract, the federal requirements must prevail, take precedence, and be in force over and against such provisions.

If the cost of the contract work includes federal participation, the work will be under the supervision of the Department, but is subject to the inspection and approval of the proper officials of the United States Government. Inspections made by authorized federal representatives will not make the United States Government a party to the contract and will not interfere with the rights of the contract parties.

The making or use of false statements by the Contractor relating to documentation is a felony punishable by a fine of no more than \$10,000, imprisonment for no more than 5 years, or both. Making or using false claims for obtaining payment against federal funds subjects violators to forfeiture of \$2,000 for each violation. This is in accordance with the anti-fraud statute originating from the Federal-Aid Road Act of 1916.

107.05

107.05. Sanitary Provisions. The Contractor must provide and maintain, in a neat and sanitary condition, facilities for the Contractor's employees to comply with the requirements and regulations of the federal, state, and local health authorities, and must take precautions to avoid creating unsanitary conditions.

The Contractor must remove temporary sanitary facilities from the project limits before final acceptance. The Contractor must construct, maintain, and remove temporary sanitary facilities at no additional cost to the Department.

107.06. Furnishing Right-of-Way. The Department will be responsible for the following:

- A. Securing right-of-way necessary for the project before construction, and
- B. Identifying in the contract any right-of-way that the Department has not secured.

107.07. Protection and Restoration of Property. The Contractor must restore, at no additional cost to the Department, public and private property damaged because of acts or omissions by the Contractor and the employees and agents of the Contractor, to a condition similar and equal to that existing before the damage occurred. If the Contractor neglects to make restoration within 7 days of receiving written notice from the Engineer, or as otherwise required by applicable laws or regulations, the Engineer may proceed to make the restoration. The Engineer will deduct the cost of the restoration from monies that are or may become due the Contractor.

107.08. Land Monuments and Property Corners. The Contractor must locate and preserve existing public land survey corners, property-controlling corners, and alignment control points as shown on the plans or as directed by the Engineer. The Contractor must provide a professional surveyor, licensed in the State of Michigan, to perform work necessary to maintain the corners. This work must be completed, and will be paid for, in accordance with section 821.

107.09. Archaeological and Historical Findings. If the Contractor finds what appear to be items of potentially archaeological or historical significance (such as bones, artifacts, or buried foundations), the Contractor must immediately stop operations in that location and notify the Engineer. The Engineer will investigate and will direct the Contractor

either to resume operations or to continue the suspension of operations, in accordance with subsection 104.01.B.

The Contractor must cooperate in the recovery of archeological and historical items, as directed by the Engineer. The Department will pay the Contractor and grant a time extension for any delay related to the recovery of archeological and historical items as extra work in accordance with subsection 103.02.

107.10. Indemnification, Damage Liability, and Insurance.

A. Indemnification. The Contractor must hold harmless, indemnify, and defend in litigation the State, the Commission, the Department, and their agents and employees against claims for damage to public or private property and for injuries to persons arising out of the performance of the work until the Contractor achieves satisfactory final inspection in accordance with subsection 109.07.C.1. The Contractor will not be responsible for claims that result from the sole negligence or willful acts or omissions of said indemnitee.

B. Workers' Compensation Insurance. The Contractor must carry the necessary Workers' Compensation Insurance and must submit a certification that it carries Workers' Compensation Insurance to the Department in accordance with subsection 102.15.

C. Bodily Injury and Property Damage. The Contractor must carry adequate insurance, satisfactory to the Department, to afford protection against claims for damage to public or private property and injuries to persons arising out of the performance of the work until the Contractor achieves satisfactory final inspection in accordance with subsection 109.07.C.1. If required by the contract, the Contractor must also carry adequate insurance to protect the owner of premises on or near which construction operations are to be performed. Copies of completed certificates of insurance must be submitted to the Department, in accordance with subsection 102.15.

1. Bodily Injury and Property Damage Other Than Automobile. Unless otherwise required by the contract, the Contractor must provide the following minimum limits of property damage and bodily injury liability:

107.10

| | |
|--|-------------|
| Bodily Injury and Property Damage Liability: | |
| Each Occurrence | \$1,000,000 |
| Aggregate | \$2,000,000 |

This insurance must include coverage for the following:

- a. Underground damage to facilities due to drilling and excavating with mechanical equipment; and
- b. Collapse or structural damage to structures due to blasting or explosion, excavation, tunneling, pile driving, cofferdam work, or the moving or demolition of buildings.

2. **Bodily Injury Liability and Property Damage Liability Automobile.** Unless otherwise required by the contract, the Contractor must provide the following minimum limits of bodily injury liability and property damage liability:

| | |
|--|-------------|
| Bodily Injury Liability: | |
| Each Person | \$500,000 |
| Each Occurrence | \$1,000,000 |
| Property Damage Liability: | |
| Each Occurrence | \$1,000,000 |
| Combined Single Limit for Bodily Injury and Property Damage Liability: | |
| Each Occurrence | \$2,000,000 |

3. **Umbrella Policy.** The Contractor may meet the requirements of subsection 107.10.C.1 and subsection 107.10.C.2 through an umbrella policy.
4. **Owners Protective Liability.** The Contractor must ensure that the insurer extends bodily injury and property damage protection, including general supervision of work performed, to the State, the Commission, the Department, and their agents and employees and, as indicated by the identity of the contracting parties, to participating political subdivisions and public corporations. The minimum limit will be \$1,000,000.

In lieu of the Owners Protective Liability, the Contractor must add to their Bodily Injury and Property Damage Policy:

- a. **Additional Insured.** The Bodily Injury and Property Damage Policy must name as additional insured the State, the Department, and the Commission and all agents and employees thereof and, where indicated by the identity of the contracting

parties, the protection must be extended to all participating political subdivisions and public corporations.

- b. **Per Project Aggregate.** The Bodily Injury and Property Damage Policy must be endorsed with an endorsement that provides the General Aggregate Limit to each designated construction project.
- c. **Umbrella Policy.** An umbrella policy with a \$2,000,000 limit must be provided.

D. **Notice.** The Contractor must ensure that all insurance policies and binders include an endorsement by which the insurer agrees to notify the Department in writing at least 30 days before there is a cancellation or material change in coverage. The Contractor must stop operations if any insurance is canceled or reduced, and must not resume operations until new insurance is in force.

E. **Damage Claims.** The Contractor is responsible for acting on damage claims that occur from execution of the contract until the Contractor achieves satisfactory final inspection in accordance with subsection 109.07.C.1. The Contractor may act directly with the claimant or through the claimants' insurance carrier.

1. **Damage Claim Program.** Before beginning construction on the project, the Contractor must submit a written damage claim program for approval by the Engineer. The damage claim program must outline the Contractor's plan for the investigation and disposition of damage claims. The Contractor must meet with the Engineer to discuss the damage claim program and develop a mutual understanding of how the Contractor will govern, administer, and enforce the program.
2. **Damage Claim Officer.** The Contractor must provide written notification to the Engineer of the name and contact information for the Contractor's Damage Claim Officer. The Damage Claim Officer is the person with the authority and responsibility to administer the Contractor's damage claim program.
3. **Damage Claim Process.** The Engineer will submit damage claim forms received by the Department to the Contractor within 14 days from the first contact with the claimant. The Contractor must act on damage claims within the time frames specified in this subsection,

107.10

and must submit to the Engineer a report on damage claims received that includes information as specified in subsection 107.10.E.5.

- a. **Claims Less Than or Equal To \$1,500.** The Contractor must reach final disposition and notify the claimant within 60 calendar days of receipt of the damage claim form from the Engineer. If the Contractor fails to reach final disposition and notify the claimant within 60 calendar days, the Engineer will enforce subsection 107.07. In this circumstance, the Department defines restoration as payment to the claimant for alleged damages as documented on the original damage claim form. If payment is made based on failure to meet the time requirement, the claimant must sign a waiver indicating that payment was made because of a failure to meet the time requirement not because of the merit of the damage claim. Before the 60 calendar days expires, the Contractor may request an extension of no more than 30 calendar days for documented circumstances beyond the Contractor's control. The Contractor must make this request in writing to the Engineer.
 - b. **Claims Greater Than \$1,500.** The Contractor must reach final disposition and notify the claimant within 120 calendar days of receipt of the damage claim form from the Engineer. If the 120 calendar days expire prior to final acceptance of the project, the Engineer will withhold the amount of the damage claim from payments to the Contractor until the Contractor reaches final disposition and notifies the claimant.
4. **Final Disposition.** The Department will withhold from the final estimate or monies due or to become due the Contractor an amount not exceeding the aggregate amount of all outstanding and unresolved damage claims until final disposition of all damage claims. Final disposition for damage claims \$1,500 or less must include payment, settlement, or denial of the damage claim by the Contractor's insurer or the Contractor. Final disposition for damage claims over \$1,500 must include payment, settlement, or denial of the damage claim by the Contractor's insurer, or settlement or payment by the Contractor.
 5. **Documentation Requirements.** The Contractor must use the Department's standard forms for processing damage claims, unless otherwise approved by the Engineer. The Contractor must submit to

the Engineer a report upon final disposition of each damage claim. The report must include the following information:

- a. Location of the incident;
- b. Specific work activities for day and time of damage claim;
- c. Detailed weather and road conditions;
- d. Traffic movements, signing, equipment in use;
- e. Any unusual occurrences;
- f. Measurements taken at the time or location of the incident;
- g. Records of all contact with Engineer or claimant to discuss disposition;
- h. Other documentation pertinent to the damage claim; and
- i. Report of final disposition of damage claim.

107.11. Contractor's Responsibility for the Work. Until the Contractor achieves satisfactory final inspection in accordance with subsection 109.07.C.1, the Contractor is responsible for the work and must take every precaution against injury to the public or otherwise, or damage to public or private property due to the elements or other causes. The Contractor is responsible for any expense resulting from and of the aforementioned injuries or damages. The Contractor must rebuild, repair, restore, and make good any injury or damage to the work before the Contractor achieves satisfactory final inspection in accordance with subsection 109.07.C.1, and at no additional cost to the Department, except for injury or damage that is beyond the Contractor's control and not the fault of the Contractor, including, but not limited to, the following:

- A. Acts of God or of the public enemy;
- B. Acts of the Government;
- C. Slides found by the Engineer to have been unavoidable;
- D. Ordinary wear and tear on sections of the road opened to traffic as required by the contract or ordered by the Engineer; and
- E. Maintenance and third party damage responsibility for portions of the work that have been granted partial acceptance, or designated for delayed acceptance, by the Department in accordance with subsection 109.07.

The Contractor must obtain approval from the Engineer for use of drainage facilities (existing or per the contract), belonging to the Department or another state or local government agency. The Engineer and the Contractor must determine the condition of the facilities and make arrangements to allow use. Before the Contractor achieves satisfactory final inspection in accordance with subsection 109.07.C.1, the Contractor must restore drainage facilities used or affected by the Contractor's operations to a condition that is equal to or better than the

107.11

condition of the facilities before the Contractor's use. Drainage facilities include catch basins, manholes, inlets, sumps, sewers, lift stations, outlets, and open drainage systems.

In case of suspension of work, the Contractor is responsible for the proper storage of materials and providing suitable drainage of the project.

107.12. Contractor's Responsibility for Utility Property and Services. For protection of underground utilities and in accordance with 1974 PA 53, the Contractor must notify Miss Dig at least 3 work days, excluding Saturdays, Sundays, and holidays, before beginning each excavation in areas where public utilities have not been previously located. Utility members will thus be routinely notified. This does not relieve the Contractor of its responsibility to notify utility owners identified in the contract that are not part of the Miss Dig alert system.

The Department's freeway lighting system, the ITS, and other miscellaneous electrical systems are not a part of Miss Dig. The Contractor must contact the maintenance representative at the MDOT Region Office before starting work near lighting systems, the ITS, and traffic systems. The Contractor must not start this work until the Department has staked the lighting systems, the ITS, and traffic systems.

The Contractor must not start work until arrangements are made for the protection of adjacent utilities, or other property where damage might result in expenses, loss, or inconvenience.

The Contractor must cooperate with the utility owner in the removal, relocation, and reinstallation work.

107.13. Personal Liability of Public Officials. The Commission, Director, Engineer, and their authorized representatives are not liable, either personally or as officials of the State, for exercising the authorities granted to them by the contract. It is understood that they act solely as agents and representatives of the State.

107.14. No Waiver of Legal Rights. The Department and the Commission are not precluded or estopped by measurements, estimates, or certificates made before or after the completion, acceptance, and payment for the work, from showing the true amount and character of the work performed and materials provided by the Contractor, nor from showing that these measurements, estimates, or

certificates are untrue or incorrectly made, or that the work or materials do not conform to the contract. The Department and the Commission are not precluded or estopped, notwithstanding measurements, estimates, or certificates and payments from recovering from the Contractor and the Surety overpayment that may have been caused by the erroneous measurement, estimate or certification and damages it may have sustained by reason of the Contractor's failure to comply with the terms of the contract. Neither the acceptance by the Director or by the Director's representative, nor payment for or acceptance of the whole or part of the work, nor extensions of time, nor possessions taken by the Department will operate as a waiver of portions of the contract or of power reserved, or right to damages provided. A waiver of any breach of the contract is not a waiver of any other or subsequent breach.

107.15. Compliance with Laws; Environmental Protection. The Contractor must take the measures during the performance of the work that are necessary to comply with federal, state, and local laws and regulations for the protection of the public health, safety, welfare, and environment. Unless the contract provides otherwise, the costs related to complying with these laws and regulations are included in the contract unit prices for related items of work.

The following are specific requirements with regard to environmental protection matters.

A. Control of Air Pollution.

1. **Dust Control.** During the construction of a project, the Contractor must maintain adequate dust control measures to prevent any detriment to the safety, health, welfare, or comfort of any person or damage to property, residence, or business. If the contract does not contain a pay item for dust control, the cost of the dust control is included in the contract unit price for other pay items.
2. **Hot Mix Asphalt Plants, Concrete Plants, and Crushing Plants.** All hot mix asphalt (HMA) plants, portland cement concrete proportioning plants, and crushing plants must be in compliance with the rules of the MDNRE.

For portable HMA plants, portland cement concrete proportioning plants, or crushing plants, the Contractor must obtain a permit-to-install from the MDNRE Permit Section, Air Quality Division (AQD). Application for this permit must be made at least 30 calendar days

107.15

before installing plants with an active MDNRE permit, or at least 60 calendar days before installing plants without an active MDNRE permit.

3. **Open Burning.** The Contractor must obtain the Engineer's approval before burning trees, brush, or stumps at the site of land clearing operations within the project limits. The Contractor must burn at least 1,400 feet from the limits of any incorporated municipality and must comply with any local ordinances or state regulations. Adequate control measures must be maintained to prevent any detriment to the safety, health, welfare, or comfort of any person or damage to property, residence, or business.
4. **Demolition or Renovation Notification.** The Contractor must not begin demolition of any building or structure without first submitting the appropriate notifications as required by the contract.

The Contractor must provide copies of all notifications to the Engineer prior to beginning demolition or before the removal of any regulated asbestos containing material.

B. Construction Site Storm Water Runoff. The Contractor must perform the work in a manner that will prevent sediment from entering watercourses, streams, lakes, and wetlands. In addition to the soil erosion and sedimentation control requirements of section 208, the Contractor must employ good housekeeping and pollution prevention practices to prevent construction related pollutants from entering the storm water drainage system or being carried outside of the project limits by storm water runoff. Potential sources of storm water pollutants include, but are not limited to, the following:

1. Materials storage areas,
2. Equipment maintenance and refueling areas,
3. Construction waste receptacles,
4. Concrete washout areas,
5. Sanitary facilities, and
6. Field office sites.

C. Control of Hazardous and Polluting Materials. The Contractor must use, store, and dispose of hazardous materials, hazardous waste, toxic materials, or polluting materials in accordance with applicable federal, state, and local laws and regulations.

1. **Fueling and Equipment Maintenance Area.** The Contractor must store fuel, perform equipment maintenance, and clean or wash vehicles and equipment, including concrete trucks, in an area equipped as follows:
 - a. Located at least 50 feet from storm drainage systems, wetlands or watercourses;
 - b. Paved or lined with a surface that will protect the soil, ground water, and surface water;
 - c. Surrounded by a containment berm; and
 - d. Equipped with a sump to collect and properly dispose of waste material.

The Contractor may propose a written plan to provide alternate protective measures for fueling and equipment maintenance areas to the Engineer for approval.

The Contractor must restore these areas in accordance with the project clean-up requirements in section 209.

2. **Equipment Cleaning and Washing.** The Contractor must:
 - a. Limit vehicle and equipment cleaning or washing within the project limits to that necessary to control vehicle tracking;
 - b. Notify the Engineer before cleaning or washing vehicles or equipment within the project limits with soap, solvents, or steam;
 - c. Contain any resulting waste and recycle or dispose of the waste in accordance with state and federal regulations;
 - d. Not use materials containing petroleum distillates to clean vehicles or equipment and must minimize the use of solvents for this purpose;
 - e. Inspect sumps regularly and remove liquids and sediments as necessary;
 - f. Use as little water as possible If washing vehicles or equipment with water; and
 - g. Equip hoses with positive shutoff valves.

107.16. Forest Protection. If performing work within or adjacent to State or National Forests, the Contractor must comply with relevant regulations of the State and Federal agencies. In National Forests, the Contractor must contact the United States Forest Service Forest Supervisor, for the appropriate section of the State, regarding the work the Contractor will be performing within or adjacent to the forest land. In State Forests, the Contractor must contact the State Forester, Forest

107.16

Management Division, MDNRE, Lansing, regarding the work to be performed within or adjacent to the forest land. The Contractor must contact the Forest Protection Section Leader, Forest Management Division, MDNRE, Lansing, to obtain burning permits.

The Contractor must observe sanitary laws and regulations with respect to the performance of work in forest areas. The Contractor must keep the forest areas in an orderly condition, dispose of refuse, and obtain permits for the construction and maintenance of construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures according to the requirements of the Forest Supervisor or State Forester.

The Contractor must obtain permits before burning refuse from clearing and grubbing operations, and require that employees and subcontractors take all precautions reasonably within their power to prevent and suppress forest fires including:

- A. Assist in preventing and suppressing forest fires at the request of Forest officials; and
- B. Make every possible effort to notify a Forest official at the earliest possible moment of the location and extent of any fire observed in the area.

107.17. Use of Explosives. Before using explosives on the project, the Contractor must obtain prior written approval from the Engineer. Such approval does not relieve the Contractor of liability or responsibility for damages resulting from the use of explosives. The Contractor must comply with all laws, regulations, and ordinances and exercise the utmost care not to endanger life or property, including new work.

107.18. Work Over Navigable Waters. The Contractor must perform work on or over navigable waters in accordance with any permits issued by the controlling authority.

107.19. Hauling on Local Roads and Streets. Before hauling materials on local roads and streets, the Contractor is responsible for obtaining approval from the respective local government agency with jurisdiction over the proposed haul routes. The Contractor must ensure haul loads are within the legal load limits established by the local government agency. The Contractor is responsible for preventing the tracking of material onto local roads and streets, and must remove such material at no additional cost to the Department.

107.20. Private Railroad Crossing for Haul Purposes. If a temporary railroad crossing is necessary, the Contractor is responsible for the following:

A. Requesting the railroad company to construct the temporary crossings and notifying the railroad company in advance of Contractor's use of the temporary crossings. This is subject to the Contractor meeting the railroad company's requirements, including executing agreements and providing insurance coverage.

B. Determining and complying with the requirements of the railroad company covering the location, installation, protection, maintenance, use, and removal of the temporary crossing. Unless otherwise required by the contract, the costs related to the temporary crossing, including but not limited to the following, are included in the contract unit prices for other pay items:

1. Installation, protection, maintenance, and removal of the temporary crossing;
2. Flaggers;
3. Construction engineering inspection by the railroad company;
4. Contractual liability insurance for the temporary crossing and any other insurance required by the railroad company; and
5. Incidental work, such as drainage facilities and the removal, alteration, and replacement of railroad fences.

107.21. Approved for Traffic. The Contractor must not open the project or sections thereof to traffic until approved by the Engineer. Whenever the project or section thereof is in a condition suitable for traffic as determined by the Engineer, the Engineer may designate it "Approved for Traffic" before project completion and the Contractor must open the project or section thereof to traffic as directed by the Engineer. To determine whether the project or section thereof is suitable for traffic, the Engineer will verify that the surfacing material, shoulders, guardrails, signs, and other appurtenances are completed as required by the contract. The Engineer's approval of the project or section thereof for traffic does not constitute partial or final acceptance of the project or any part of it, or a waiver of any provision of the contract. The Contractor is not responsible for the costs of maintaining the section of the project opened for traffic.

If the Engineer designates the entire project or any section of it as "Approved for Traffic" and the Contractor opens it to traffic before final acceptance and final payment, the Contractor must perform the remainder of the work in a manner that causes the least obstruction to traffic. The Contractor must make provisions for the safety of traffic as

107.21

required by the contract. Legal weight restrictions, established by 1949 PA 300 as amended, local ordinances, or legal posting, must apply to sections of the project designated as "Approved for Traffic."

Before the seasonal suspension, the Engineer will determine the work the Contractor must complete to bring the project to an acceptable condition for traffic and winter maintenance, including necessary traffic and erosion control measures. Until the Contractor completes this work, the Engineer will not designate the project "Approved for Traffic."

On sections of the project opened to traffic, the Contractor must correct damage due to defective materials, to faulty workmanship, to operations of the Contractor, and to natural causes (except as provided in subsection 107.11), at no additional cost to the Department.