

**Legal Relations and Responsibilities to the Public****1701****Laws to be Observed**

The Contractor shall keep fully informed of all Federal and State laws; all local laws, ordinances, and regulations; and all orders and decrees of bodies and 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 all applicable laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the Department and its representatives against all claims and liabilities arising from or based on violations committed by the Contractor or the Contractor's employees.

The Contractor shall immediately report to the Engineer in writing any provisions in the Contract that are contrary to or inconsistent with any law, ordinance, regulation, order, or decree.

**1702****Permits, Licenses, and Taxes**

The Contractor shall procure all permits and licenses; pay all charges, fees, and taxes; and give all notices necessary and incidental to the due and lawful prosecution of the work. When requested, the Contractor shall furnish the Engineer with evidence indicating compliance with the permit, license, and tax requirements.

**1703****Patented Devices, Materials, and Processes**

The Contract prices shall, without exception, include compensation for all royalties and costs arising from patents, trademarks, and copyrights, that are in any way involved in the work.

If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for its use with the patentee or owner, and shall indemnify and save harmless the Department and any political subdivision, department, or third party affected from all claims for infringement by reason of its use.

**1704****Restoration of Surface Opened by Permit**

Any individual, firm, public utility, or corporation wishing to make an opening in the highway must secure a permit from the Department. The Contractor shall allow only those parties bearing valid permits to make openings in the highway, as authorized.

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The Department reserves the right:

- (1) For the proper authorities of a political subdivision to construct or reconstruct any utility service in the highway at any time, and
- (2) To grant permits for the construction or reconstruction of any utility service.

The Contractor will not be entitled to any damages from the Department either for the opening up of the surface or for any related delays.

When the Engineer orders repairs that are made necessary by an opening, the Department will pay for the ordered repairs as Extra Work in the absence of other payment provisions in the Contract. The Contractor shall make ordered repairs subject to the same conditions and requirements as apply to the original work performed.

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##### **Federal-Aid Provisions**

When the United States Government pays all or any portion of the cost of a Project, the Federal laws and the rules and regulations made pursuant to those laws must be observed by the Contractor and his subcontractors. All work in which the Federal Government participates financially will be subject to inspection by the appropriate government agency, but this inspection will not in any sense make the Federal Government a party to the Contract, nor will it interfere in any way with the rights of either party to the Contract.

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##### **Employee Health and Welfare**

The Contractor shall provide and maintain all sanitary and safety accommodations for the use and protection of the Contractor's employees and suppliers as may be necessary to provide for their health and welfare. The Contractor shall be responsible to comply with all applicable Federal, State, and local safety and health codes and regulations, as well as those of other bodies and tribunals having jurisdiction. The Contractor's attention is particularly directed to the employee safety and sanitation regulations set forth in: 29 CFR 1926, Occupational Safety & Health Administration (OSHA), Construction Industry Standards; MN Statue § 182; and Minnesota Department of Labor & Industry, OSHA Division, Minnesota Rules 5205 through 5215.

All required safety and health related equipment and provisions shall conform to the applicable codes and regulations, be in operable condition, and allow Department personnel to perform required duties at the appropriate time. The Contractor shall furnish, install, and

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remove required safety and health related equipment and provisions, at no cost to the Department.

The Contractor shall not refuse entry for Federal, State, and local safety and health inspections or investigations.

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**Public Convenience and Safety**

The Contractor shall at all times conduct operations and perform the work in a manner that will ensure the least possible obstruction to traffic. The Contractor shall provide for the safety of the general public as well as the residents living beside the highway.

The Contractor shall provide temporary facilities where and when necessary to conveniently serve pedestrian travel over or through obstructions at public walkways and at other locations designated by the Engineer. Open excavations that contain water, or are hazardous for other reasons, shall be adequately fenced off and posted with conspicuous warning signs.

Whenever work is performed in a municipality, the Contractor shall give the chiefs of the local fire and police departments sufficient notice to arrange for routing of emergency vehicles before it becomes necessary to blockade a street. The Contractor shall keep them informed as to the status and removal of street blockades affecting emergency travel. Access to fire hydrants shall not be obstructed without the approval of the local fire chief.

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**Railroad-Highway Provisions**

These provisions shall apply only when the Contract requires that work be performed on the Right of Way of a railroad or that materials be hauled across the tracks of a railroad over a private crossing shown in the Plans as a designated haul road, or if materials or equipment might extend into the Railway right of way. If, under any other conditions, the Contractor desires to haul material across a railroad track over a private crossing or to encroach on railroad property for other reasons, the Contractor shall make arrangements with the railroad company involved.

The Department will secure all necessary easements to permit the hauling of materials across the tracks of a railroad over a pre-existing private crossing when required by the Contract. No compensation in addition to the Contract prices will be made to the Contractor by the Department because of any delays or costs incurred in complying with these provisions.

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Before commencing work on the Right of Way of a railroad, and before any materials are hauled across the tracks of a railroad at a private crossing, the Contractor shall satisfy the requirements of 1708 and all its subparts, and shall give the railroad at least thirty (30) days' notice in advance of the starting date.

Contractor is reminded that each Railway has its own unique requirements and Contractor is responsible for ascertaining what those requirements are prior to commencing work. While on or about Railroad property, Contractor shall fully comply with the Railway's requirements, including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor shall be responsible for fully informing itself as to Railway requirements, including (but not limited to) the following:

- a) Prior to entering the Railway's property, each person providing labor, material, supervision or services connected with the work to be performed on about Railway property shall, if required by the Railway, attend a safety orientation session conducted or approved by Railway. For some Railways, this requirement can be met by going to the following Web site: [www.contractororientation.com](http://www.contractororientation.com).
- b) If required by Railway, prior to entering the Railway's property, the Contractor shall prepare and implement a safety action plan acceptable to the Railway. Contractor shall audit its compliance with that plan during the course of its work. A copy of said plan and audit results shall be kept at the work site and shall be available for inspection by Railway at all reasonable times.

### 1708.1 GENERAL REQUIREMENTS

All work performed over, below, or adjacent to the railroad's tracks and on its Right of Way shall be performed in a manner satisfactory to the railroad and at such times as will not interfere with or endanger operations of the railroad.

No work shall be done that will infringe on the statutory clearances, set forth in MN Statutes §§ 219.45 to 219.53 until the plans have been approved by the Engineer, the railroad, and the Mn/DOT Director of Railroad Administration. No clearances less than those shown on the approved Plans will be permitted at any time.

In the event that an emergency occurs in connection with work on the railroad's Right of Way, the railroad shall have the right to do any work it deems necessary to maintain traffic. If the emergency is caused by the operations of the Contractor, the Contractor shall reimburse the railroad for the cost of the emergency work.

Railroad-highway grade separation structures are joint undertakings with the railroad. Representatives of the railroad have the right to inspect the work at any time during its construction.

## 1708.2

No work performed by Contractor shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railway, its lessees, licensees or others, unless specifically authorized in advance by the Railway. Nothing shall be done or suffered to be done by the Contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept at least 15.24 m (**50 feet**) from the centerline of Railway's nearest track, unless specifically authorized in advance by the Railway, and there shall be no vehicular crossings of Railway's track except at existing open public crossings, unless a temporary crossing has been specifically authorized in advance by the Railway.

Contractor shall be responsible to the Railway, including its affiliated railway companies and its tenants, for damages for any unscheduled delay to freight or passenger trains that are caused by the Contractor as follows:

Contractor acknowledges the serious consequences that will result from any unscheduled delay(s) that effect the Railway's operations, particularly where such delay causes the delay of freight trains. Contractor further acknowledges that such delays affect Railway's ability to fully utilize its equipment and meet customer service and contract obligations. The potential effects of such delay make it difficult to ascertain the amount of damages that would be caused.

### **1708.2 STRUCTURAL PLANS AND CONSTRUCTION METHODS**

The Contractor shall prepare five (5) sets of plans indicating the foundation preparation methods he intends to use adjacent to the Railway's tracks or at any bridge structures that are part of the project. The detailed plans shall indicate the protective measures that will be used to safeguard railroad property, embankment, traffic, and trainmen from damage and accident during construction operations adjacent to the Railway's track and shall include provisions for the following requirements:

- a) Prior to excavating for pier footings, which are adjacent to the Railway's track, the Contractor shall construct a substantial railing between the tracks and the pier excavation and at the ends of the excavation. Details of pier excavation and protection need to be approved by the Railway.
- b) When the Contractor's method of construction includes sheeting on the sides of footings adjacent to Railway's track, the sheeting shall be driven before any excavation for these footings is started. Sheeting shall be cut off at or slightly below the ground level

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immediately after being driven. Details of sheeting installation and removal need to be approved by the Railway.

- c) The excavation at the piers adjacent to Railway tracks shall be backfilled immediately after completion of pier construction, and the railing shall remain in place until the backfill is substantially completed.
- d) At each location where the Contractor's operations encroach on the minimum horizontal clearance of 3.6 m (**12 feet**) (measured from the centerline of tracks), the Contractor shall, before any excavation is started, construct a substantial plank trainman's walk over the excavation, between these tracks and the piers. (Contractor will be permitted to construct his protective installations so as to just clear the neat lines of the footings along the track sides of those piers where his operations will encroach on the minimum Railway horizontal clearance of 3.6 m (**12 feet**.)

The five (5) sets of detailed plans shall be processed in the following manner:

- a) The Contractor shall submit the plans to the Railway for approval.
- b) The Railway will return the approved plans to the Contractor.
- c) The Contractor shall transmit the plans to the Engineer for approval.
- d) The Engineer will transmit the plans to the Mn/DOT Office of Freight and Commercial Vehicle Operations, Rail Administration Section, for approval and for review of any temporary clearance less than that required by statute, and for final distribution.

When approval by an agency or individual is required, as indicated above, such approval shall be indicated on all five (5) sets of plans. When approval of the plans is contingent upon modifications, the contingencies will be noted on the plans (or on attachments referred to on the plans) by the approving agency or individual.

Final distribution of the approved plans shall be as follows:

- a) One (1) set to the Railway
- b) Two (2) sets to the Contractor
- c) One (1) set to the Project Engineer
- d) One (1) set to the Mn/DOT Office of Freight and Commercial Vehicle Operations, Railroad Administration Section.

No work shall be done which may affect Railway traffic, embankment, property and trainmen before approval of the construction methods and protective measures have been obtained from the Railway involved, the Engineer, and the Mn/DOT Director of Railroad Administration.

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All costs incurred by the Contractor resulting from compliance with this section will be considered to be incidental expenses for which no direct compensation will be made.

**1708.3 LIABILITY INSURANCE**

Whenever the Contract requires that work be performed on the Right of Way of a railroad or that materials be hauled across the tracks of a railroad over a private crossing, the Contractor shall provide Railroad Protective Liability Insurance in accordance with the following provisions:

- (a) The insurance shall be provided in accordance with the Standard Provisions for General Liability Policies (Railroad Protective Liability Form).
- (b) Some Railways have specific insurance requirements, different or in addition to those set forth below; therefore, Contractor has the responsibility to ascertain each Railway's specific requirements and to procure the required insurance. Unless otherwise provided in the Contract, the limits of liability shall be as follows:

<b>Coverages</b>	<b>Limits of Liability</b>
Bodily Injury Liability	
Property Damage Liability	
Physical Damage to Property	\$2,000,000 each occurrence
Bodily Injury Liability	
Property Damage Liability	
Physical Damage to Property	\$6,000,000 aggregate

- (c) The insurance shall be in full force and effect before any work is performed on the railroad's Right of Way, including the hauling of materials across the railroad's tracks over a private crossing.
- (d) The insurance shall not be canceled by the Contractor until the work for which it is required has been completed and accepted.
- (e) One true copy of the insurance policy shall be delivered to the Department and to each of the railroad companies named in the Special Provisions at least 10 days in advance of the starting date of the work for which the insurance is required.

**1708.4 FLAGGING, PROTECTIVE SERVICES AND DEVICES**

Whenever the Contract requires that work be performed on the Right of Way of a railroad or that materials be hauled across the tracks of a railroad over a private crossing, flagging and other protective services and devices will be provided by the railroad as it deems necessary for protection of its facilities, personnel, equipment, and traffic.

The Contractor shall make all arrangements with the Railway to provide the necessary flagging and other protective services and devices. It shall also be the duty and responsibility of the Contractor to

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notify the Railway and the Engineer at least thirty (30) days in advance of the need for flagging and other protective services and devices. It shall also be the duty and responsibility of the Contractor to notify the Railway and the Engineer at least five (5) working days in advance of the date when flagging and other protective services and devices will no longer be required, so as to allow the Railway sufficient time to abolish the flagger position per union requirements. As each Railway may have time requirements different from the ones set forth above, it is the responsibility of the Contractor to ascertain what specific time limits apply for proper notification.

Flagging services will be performed by qualified Railway flaggers. In general, Railway flagger and protective services and devices will be required and furnished when Contractor's work activities are located over or under any railroad track or within 7.62 m (**25 feet**) measured horizontally from center line of the nearest track and when cranes or similar equipment positioned outside of the 7.62 m (**25 foot**) horizontal zone could foul the track in the event of a tip over or other catastrophic occurrence, but not limited thereto. Flagging and other protective services and devices shall be required under, but not limited to, the following conditions:

- a) When in the opinion of the Railway's Roadmaster, it is necessary to safeguard Railway's property, employees, trains, engines and facilities.
- b) When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's Roadmaster, track or other Railway facilities may be subject to movement or settlement.
- c) When work in any way interferes with the safe operation of trains at timetable speeds.
- d) When any hazard is presented to Railway's track, communications, signal, electrical, or other facilities either due to persons, material, equipment, or blasting in the vicinity.
- e) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment, which might result in making the track impassable.

Unless otherwise specified in the Contract, the Department shall reimburse the Railway for all costs of necessary flagging and other protective services and devices that may be required to protect the Railway's facilities, personnel, equipment, and traffic.

#### **1708.5 SPECIAL BOND REQUIREMENTS**

Before commencing work on the railroad's Right of Way and before any materials are hauled across the railroad's tracks over a private crossing, the Contractor shall furnish a bond to guarantee

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reimbursement to the railroad for the costs of providing protective services and devices.

The bond shall name the Contracting Authority as obligee, shall be in the amount specified in the Special Provisions, and shall be issued by a corporation authorized to contract as a surety in the State of Minnesota.

The bond shall be for the use of the obligee and of any railroad furnishing flagpersons or related services for the protection of railroad traffic and property, from the time any Contract work is started on railroad Right of Way until all Contract work required on railroad Right of Way has been completed.

The bond shall be conditioned for the payment of all expenses, as they become due, that are incurred by any railroad in furnishing such flagpersons and related services; for saving the obligee and the railroad harmless from all costs and charges that may, accrue on account of furnishing flagpersons and related services; and for enforcing the terms of the bond, including reasonable attorney's fees, in case an action is successfully maintained.

The bond shall provide that no assignment, modification, or change of the Contract, or any change in the work covered thereby, nor any extension of time for completion of the Contract work shall release the sureties on the bond. The form of the bond shall be that which is on file with the Mn/DOT Director of Railroad Administration.

The bond shall be in addition to all other bonds required by the Contract and it shall be subject to the 6-year statute of limitations prescribed by MN Statutes §§ 541.05. A copy of the bond shall be furnished to the Department and to each railroad company named in the Special Provisions.

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### **Navigable Waterways**

All work on navigable waters shall be so conducted that free navigation of the waterways will not be interfered with, and so that existing navigable depths will not be impaired, except as allowed by permit issued by the proper public authority.

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### **Traffic Control Devices**

#### **1710.1 GENERAL**

All traffic control devices and methods shall conform to the Minnesota Manual on Uniform Traffic Control Devices (MN MUTCD), Minnesota Standard Signs Manuals Parts I and II and the appropriate Material Specifications, and the following:

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- (a) Specification 3352.2A2a -- Standard No. 1 Reflective Sheeting -- White reflective sheeting, when used in conjunction with orange reflective sheeting (normally a barricade board application), shall meet all but the durability requirement.
- (b) All signs, paddles, and other traffic control devices, including those used for daytime operations, shall be reflectorized.

### **1710.2 PROVIDE, MAINTAIN, AND REMOVE**

The Contractor shall provide and maintain all traffic control devices as deemed necessary by the Department in accordance with the Contract documents and the MN MUTCD; this includes, but is not limited to, the following:

- (a) To advise, warn, and alert the traveling public of construction in advance of the Project termini and on all roads, streets, and public trails approaching or crossing the Project.
- (b) To control and guide traffic through the Project.
- (c) To protect, warn, and exclude traffic and to protect workers at all work sites.
- (d) To provide necessary flag persons and pilot vehicles.

If, at any time, the Contractor fails to properly furnish, install, maintain, or remove any of the required traffic control devices, the Department reserves the right to properly correct the deficiency and to deduct the costs from any moneys due or becoming due to the Contractor.

### **1710.3 PLANNED DETOURS**

The Department, at its expense, will design, provide, install, maintain, and remove all necessary traffic control devices to control and guide traffic over detours provided for in the Contract.

### **1710.4 DETOURS AT CONTRACTOR'S REQUEST**

The Department, at the Contractor's expense, will design, provide, install, maintain, and remove all necessary traffic control devices to control and guide traffic over detours established by the Department at the Contractor's request in accordance with 1404.

### **1710.5 TEMPORARY BY-PASSES**

- (a) The Department, at its expense, will design, provide, install, maintain, and remove all necessary traffic control devices to control and guide traffic over the temporary by-passes provided for in the Plans or Special Provisions or when ordered by the Engineer.
- (b) The Department, at the Contractor's expense, will design all Contractor-requested temporary by-passes, including the necessary signing thereon. The Contractor will provide, install, maintain, and remove all necessary signing and traffic control devices used to control and guide traffic over such by-passes at no expense to the Department.

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### **1710.6 CONTRACTOR'S RESPONSIBILITY**

The Contractor shall certify to the Engineer that all traffic control devices furnished to control, warn, or protect traffic, employees, and pedestrians are furnished, placed, and maintained in full compliance with the provisions hereof and all other applicable requirements.

Approval of the traffic control devices and approval of the Contractor's method of application of traffic control measures as provided for herein will not relieve the Contractor of responsibility for protecting the work, the workers, and the traveling public.

Any traffic signs not removed or relocated by the Department prior to construction shall remain in place and be protected by the Contractor for the duration of the work, except as otherwise authorized by the Engineer. Should any sign interfere with construction, it may be adjusted or removed and reset at a temporary location when so authorized by the Engineer, provided that location is not critical and the Contractor resets the signs at their permanent locations as soon as construction operations permit. In no case shall the Contractor remove or disturb a traffic sign without notifying the Engineer in advance, and then only after satisfactory arrangements have been made for its disposition. No additional compensation will be made to the Contractor for any expenses incurred in removing, protecting, and replacing traffic signs as provided for herein, nor for any delays, inconvenience, or damage sustained due to any special construction required in prosecuting the work in the presence of traffic signs.

### **1710.7 ENGINEER'S AUTHORITY**

Acceptance or rejection, at any time, of a traffic control device provided by the Contractor but not incorporated in the final construction, will be subject to the Engineer's judgment as to acceptable day or night performance. If a traffic control device is rejected and appropriate corrective action is not taken by the Contractor to remedy the deficiency, the Engineer will take appropriate action and deduct all costs related thereto from the Contract.

The Engineer may request representative samples or remove a traffic control device for testing at no cost to the Department.

### **1710.8 COMPENSATION**

The Contractor will receive and accept the compensation provided for in the Contract as full payment for furnishing, placing, relocating, maintaining, and removing all traffic control devices required for the Contract for the duration of the Contract, but only when and to the extent that the Proposal contains specific items and unit prices for traffic control devices.

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**Use of Explosives**

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

All explosives shall be stored in a secure manner in compliance with all laws and ordinances, and all storage places shall be clearly marked. Where no local laws or ordinances apply, storage shall be provided satisfactory to the Engineer and in general not closer than 300 m (**1000 feet**) from the road or from any building or camping area or place of human occupancy.

The Contractor shall notify each public utility company having structures in proximity to the site of the work of his intention to use explosives. Such notice shall be given sufficiently in advance to enable the companies to take such steps as they may deem necessary to protect their property from injury.

The Contractor is advised of the potential hazard of premature explosion of electric blasting caps due to propagation of radio frequency energy by transmitters of radio and related services such as television, radar, and wireless communications. Operators of short wave transmitters within range of the blasting operations shall be given advance warning by the Contractor, along with any other precautions considered necessary.

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**Protection and Restoration of Property**

**1712.1 PROPERTY**

The Contractor is responsible for the preservation of all public and private property of any character in conducting the work.

**A Monuments**

The Contractor shall preserve all land and property corner monuments, Right of Way monuments, and vertical and horizontal control point monuments indicated in the Contract or noted in writing by the Engineer prior to work in the vicinity of the monument. If the Engineer determines that a monument, which has been designated to be preserved, has been disturbed during construction activities, the Department will deduct a charge of \$1000.00 per monument from the moneys due or becoming due the Contractor. The number of monuments disturbed or destroyed will be determined by the Engineer. Where the Engineer determines that a monument must be removed to allow construction, no charge will be deducted from moneys due or becoming due the Contractor.

**B Utilities..... 1507**  
**C Protection and Restoration of Vegetation ..... 2572**

**1712.2 ADVANCE NOTICE**

The Contractor shall give advance notice to the owners of all private property that will be interfered with by the Contractor's operations, advising them of the nature of the interference, and arranging with them for the protection or disposition of their property.

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**1712.4 GENERAL LIABILITY**

The Contractor is responsible for all damages to property of any character, resulting from any act, omission, neglect, or misconduct in the execution or nonexecution of the work, except for damage to underground property within the Right of Way if its existence and approximate location were not made known within the Contract. At no expense to the Department, the Contractor shall restore damaged property to a condition equal to or better than that existing before the damage was done, by repairing, rebuilding, or replacing it as directed, or otherwise making good the damage in an acceptable manner.

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**Forest Protection**

In carrying out work within or adjacent to State or National Forests, the Contractor shall comply with all regulations of the USDA Forest Service, State Fire Marshal, Department of Natural Resources, Division of Forestry, or other authority having jurisdiction, governing the protection of forests and the carrying out of work within forests, and shall observe all sanitary laws and regulations with respect to the performance of work in forest areas. The Contractor shall keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the construction of field offices and other structures in accordance with the requirements of the Forest Supervisor.

The Contractor shall take all reasonable precaution to prevent and suppress forest fires and shall require employees and subcontractors to take all reasonable measures within their power to prevent and suppress forest fires. The Contractor shall make every possible effort to notify a Forest official at the earliest possible moment of the location and extent of fire.

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**Responsibility for Damage Claims**

The Contractor shall indemnify, defend, and save harmless the Department, its officers, and its employees from all suits, actions, and claims of any character brought because of injuries or damages received

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or sustained by any person, persons, or property on account of the operations of the Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of the Contractor; or because of any claims arising or amounts recovered from infringements of patent, trademark, or copyright; or because of any claims arising or amounts recovered under the Workers' Compensation Act, or under any other law, ordinance, order, or decree.

The Department may retain for its use money that is due the Contractor under and by virtue of the Contract, as may be necessary to cover any suits, actions, or claims arising on account of the Contractor's operations or in consequence of any act, neglect, omission, or misconduct of the Contractor; or, in case no money is due, the Contractor's Sureties may be held liable until those suits, actions, or claims have been settled and suitable evidence to that effect has been furnished to the Department. Moneys will not be withheld if the Contractor produces satisfactory evidence indicating adequate protection by public liability and property damage insurance.

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**Opening Sections of the Project to Traffic**

Opening of sections of the roadbed to traffic prior to completion of the entire Contract may be required by the Special Provisions or may be ordered by the Engineer in the event of unforeseen necessity or desire. Opening of a section of the roadbed to traffic shall not constitute acceptance of the uncompleted portions of the Project, nor shall it act to waive any provisions of the Contract.

On all sections of the roadbed that are opened to traffic prior to completion, the Contractor will not be required to assume any expense entailed in maintaining the roadbed for traffic, but shall not be relieved of responsibility for the repair of damages to the work that are not attributable to traffic. In the absence of Contract prices covering roadbed maintenance, the Department may require its performance as Extra Work or may perform it with its own forces.

When a section of the roadbed is opened to traffic by order of the Engineer for unforeseen reasons not the fault of the Contractor, the Department will reimburse the Contractor for additional expenses incurred in completing the remaining work under traffic, and may extend the time for completion if justified, in which case an Agreement shall be executed in advance, setting forth the conditions agreed upon.

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On those sections of the Project that are opened to traffic prior to completion, as a requirement of the Contract, or that are opened by order of the Engineer as a result of failure or negligence on the part of the Contractor, the remaining construction operations shall be conducted so as to cause the least possible obstruction to traffic, and the Contractor shall not receive any additional compensation or extension of time due to increased costs or changed working conditions occasioned by opening of the road to traffic prior to its completion.

Nothing herein shall relieve the Contractor of obligations for maintenance of traffic over roads undergoing improvements, as provided for in 1404, nor shall anything apply to temporary use of the road by traffic during periods of winter suspension.

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**Contractor's Responsibility for Work**

The Contractor is responsible for the work until final written acceptance of the Project by the Engineer. The Contractor has the charge and care of the Project and shall take every precaution against injury or damage to any part of the Project by the action of the elements or from other cause, whether arising from the execution or from the nonexecution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occurring before final acceptance. The Contractor shall bear these expenses except as otherwise expressly provided in the Contract and except for damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God such as earthquake, tidal wave, tornado, hurricane, other cataclysmic phenomenon of nature, or acts of the public enemy or of governmental authorities.

In case of suspension of work, the Contractor is responsible for the Project and shall take such precautions as may be necessary to prevent damage to the Project, provide for normal drainage, and erect necessary temporary structures, signs, or other facilities at no expense to the Department. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under the Contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury consistent with 2571, 2572, and 2575.

If the Contractor fails to comply with these provisions, the Engineer will notify the Contractor in writing of the non-compliant work. If the Contractor fails to take action as ordered, the Department may proceed

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to have the work performed by others and to deduct these costs from moneys due the Contractor.

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**Air, Land, and Water Pollution**

**1717.1 GENERAL**

The Contractor shall schedule and conduct construction operations in a manner that will prevent, control, minimize, or abate pollution of air, land, and water in accordance with 1701. The Contractor shall obtain all necessary permits in accordance with 1702 and for temporary work not shown in the Contract.

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**B Water Protection**

The Contractor shall take all necessary precautions and actions to prevent pollution of ground, flowing, and impounded waters of the State with any particulate or liquid matter that may be harmful to fish and wild life or detrimental to public use of the water.

The Contractor shall prevent siltation and the resulting turbidity of public waters. Water containing sediment shall not be allowed to enter public waters until its sediment content has been reduced by filtration, settlement, or other means to the appropriate standard. When turbidity standards have not been established for a public water, the turbidity of the effluent shall be not more than that of the water into which it is discharged or will eventually enter. Wash water or waste from concrete mixing operations shall not be allowed to enter streams and public waters.

The Contractor shall minimize the crossing of streams and rivers with hauling equipment. Temporary bridging shall be used where an appreciable number of crossings are necessary. The Contractor shall clear the crossings of temporary construction as soon as practical after the purpose has been fulfilled. The Contractor shall prevent water pollution from haul roads, work platforms, temporary earth fills, and other temporary construction used to facilitate bridge or culvert construction.

**1717.2 Erosion Control**

The Contractor shall comply with all applicable laws, ordinances, regulations, orders, and decrees pertaining to erosion control, sediment control, and storm water management affecting the conduct of the work. When required, the Contractor shall obtain the National Pollution Discharge Elimination System (NPDES) permit prior to starting work. No work shall be initiated until the Minnesota Pollution Control Agency's (MPCA) letter of coverage has been posted on site by the Contractor, or the Contractor verifies to the Engineer that the permit has

been applied for by registered mail to the MPCA a minimum of seven days before starting soil disturbing activities.

**A General Requirements**

The Contractor shall schedule and conduct construction activities in a manner that will minimize soil erosion and the resulting siltation and turbidity of surface waters. The Contractor shall comply by the requirements herein regardless whether or not an NPDES permit for the work is required.

**A1 Before Construction**

The Contractor shall install temporary sediment control measures in areas tributary to public waters before construction begins in a drainage area.

**A2 During Construction**

The Contractor shall implement the Project's Storm Water Pollution Prevention Plan. The Contractor shall schedule and install temporary and permanent sediment and erosion control measures, construct ponds and drainage facilities, finish earth work operations, place topsoil, establish turf, and conduct other Contract work in a timely manner to minimize erosion and sedimentation.

All exposed soil areas with a continuous positive slope within 60 m (**200 feet**) of surface waters, including pond sides slopes, curb and gutter systems, storm sewer inlets, temporary or permanent drainage ditches, or other storm water conveyance systems, shall have temporary erosion protection or permanent cover for the exposed soil areas within the following time frames (For the purposes of this provision, exposed soil areas do not include stockpiles or surcharge areas of sand, gravel, aggregate, concrete, or bituminous.):

<u>Type of Slope</u> .....	<u>Time*</u>
Steeper than 1 vertical: 3 horizontal.....	7 days
Between 1:3 and 1:10.....	14 days
Flatter than 1 vertical: 10 horizontal.....	21 days

\* The maximum time an area can remain un-worked by the Contractor without temporary or permanent erosion control measures implemented.

In drainage areas contributing to Special Waters, exposed soil on slopes 1:3 or steeper must have temporary erosion protection or permanent erosion protection installed within 3 days of the soil no longer actively being worked. For all other exposed soil slopes in drainage areas contributing to Special Waters, temporary erosion protection or permanent erosion protection must be installed within 7 days of the soil no longer actively being worked. Special Waters are defined as those listed and referenced in the NPDES Permit. The bottom of temporary or permanent drainage ditches constructed to drain water from a construction site must be stabilized with erosion control

## 1717.2

measures within 60 m (**200 feet**) from the property edge or from the point of discharge to any surface water. Stabilization shall be completed within 24 hours of connecting the drainage ditch to a surface water, existing gutter, storm sewer inlet, drainage ditch, or other storm water conveyance system that discharges to surface waters.

Pipe outlets shall be provided with temporary or permanent energy dissipation within 24 hours of connecting the pipe to a surface water.

The Contractor shall limit the surface area of erodible soil that can be exposed to possible erosion at any one time when the permanent erosion control features are not completed and operative.

### **A3 Vehicle Tracking**

The Contractor shall minimize vehicle tracking of sediment or soil off site at locations where vehicles exit the construction site onto paved surfaces. In accordance with 1514 and 2051, tracked sediment shall be removed from paved surfaces, which do not drain back into the construction site, within 24 hours of discovery.

### **A4 Sediment Removal**

The Contractor is responsible for preventing or minimizing the potential for erosion or siltation after temporary erosion or sediment control work has been performed. The Contractor shall retrieve all sediment that has left the Right of Way, to the fullest extent possible. Unless the Project has received approval or certification for depositing fill into surface waters, the Contractor shall remove all deltas and sediment deposited in drainage ways or catch basins and restabilize the areas where sediment removal results in exposed soil. The removal and stabilization shall take place within 7 calendar days of discovery unless precluded by legal, regulatory, or physical access restraints. If precluded, removal and stabilization must take place within 7 calendar days of obtaining access. The Contractor is responsible for contacting all local, regional, state, and Federal authorities before working in surface waters and obtaining applicable permits.

### **A5 Suspension of Grading**

The Contractor shall shape exposed soil and incorporate temporary and permanent erosion control measures to the satisfaction of the Engineer before suspension of grading operations for any appreciable length of time. Prior to shutdown and ceasing grading activities for the winter, exposed soils and discharge points shall have temporary or permanent cover installed.

### **B Related Work**

The Contractor shall control drainage and erosion on the work related to the Project including: haul roads, temporary construction, waste disposal sites, plant and storage locations, and borrow pits other than commercially operated sources. The Contractor shall maintain the

area, shape the area to allow storm runoff with minimum erosion, replace topsoil, and establish vegetative cover on areas where the potential for pollution has been increased due to the Contractor's operations. The Contractor's waste disposal sites, borrow pit areas or other related work that disturbs 0.4 hectares (**1 acre**) or more of total land area and located outside of the Right-of-Way will require the Contractor's own NPDES permit.

**C Quality Control**

The Contractor shall be responsible for maintaining a quality control program to ensure that erosion is controlled, that is sedimentation is prevented and that provisions of permits are adhered to.

The quality control program shall consist of:

- a.) Ensuring that permit requirements related to the contractors construction activities are adhered to.
- b.) Conducting the inspections required in the NPDES permit.
- c.) Maintaining the NPDES inspection log
- d.) Ensuring that erosion control is incorporated into the work in a timely manner and that disturbed areas are stabilized with mulch/seed or vegetative cover on a section by section basis.
- e.) Ensuring in accordance with 2573.3 that temporary erosion control devices are maintained.
- f.) Ensuring in accordance with 2573.3 that temporary erosion control devices are removed when they are no longer necessary.

In accordance with 1506 the Contractor shall have a competent individual available to the Project to conduct the quality control program. The Contractors quality control and inspection procedures shall be subject to review by the Engineer. NPDES inspection records shall be maintained by the Contractor at the Project site and made available at all times for verification by the Engineer.

**D Erosion Control Schedule**

The Contractor shall prepare and submit a weekly schedule of proposed erosion control activities for the Engineer's approval. The Engineer may require schedules to be submitted orally or in writing. The schedule shall provide a discussion of:

1. Proposed erosion control installations and when they will be installed.
2. Areas ready for permanent turf establishment and when it will be accomplished.
3. Grading operations and how erosion control will be incorporated into the work.
4. Repair or maintenance required on erosion control installations and when it will be accomplished.

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5. Proposed erosion control measures during periods of suspension of work.

### **E Site Plans**

The Engineer may require the Contractor to submit a site plan detailing proposed erosion control and sediment control measures and a schedule indicating starting and completion times for construction operations working in water bodies and/or in direct proximity to waters of the state.

Contractor shall not start work in the affected areas until the schedule and site plan have been accepted by the Engineer.

### **F Compensation**

The Contractor will receive compensation for erosion control as provided for in the Contract. All other expenses incurred in complying with these provisions and 1717 shall be borne by the Contractor. The Contractor will not receive compensation for erosion control off of the Right of Way unless so specified in the Contract. Temporary and permanent erosion or pollution control measures ordered by the Engineer, which are necessitated by additional Contract work or by unforeseen failure of the original erosion or sediment control work provided for in the Contract, will be paid for at the appropriate Contract prices for like work or as Extra Work in the absence of comparable items of work.

### **G Withholding of Payment—Noncompliance**

If the Contractor fails to install erosion or sediment control measures ordered by the Engineer, the Engineer may withhold payment from related work until the control measures are undertaken by the Contractor. When the Contractor fails to conduct the quality control program, doesn't conduct the inspections required in the NPDES permit, or fails to take action ordered by the Engineer to remedy erosion or sediment control problems: The Engineer will issue a written order to the Contractor. The Contractor shall respond within 24 hours with sufficient personnel, equipment and/or materials and conduct the required work or be subject to a \$500.00 per calendar day deduction for noncompliance.

## **1717.3 COMPENSATION AND TIME EXTENSION**

The Contractor will not receive additional compensation or time extensions for any disruption of work or loss of time caused by any actions brought against the Contractor for failure to comply with air, land, and water pollution controls.

**1718**

**Furnishing Right of Way**

The Department will furnish all Right of Way for construction work in advance of construction needs. Any exceptions will be indicated in the Contract.

**1719**

**Personal Liability of Public Officials**

In carrying out the provisions of the Contract, and in exercising the powers and authorities granted to them by or within the scope thereof, there shall be no personal liability upon the Commissioner, the Engineer, or their authorized representatives, it being understood that in all matters they act solely as agents and representatives of the Contracting Authority.

**1720**

**No Waiver of Legal Rights**

Upon completion of the Project, the Department will expeditiously make final inspection of the work and notify the Contractor of acceptance. However, final acceptance will not preclude or stop the Department from correcting any measurement, estimate, or certificate made before or after completion and acceptance of the work. The Department will not be prevented, precluded, or stopped from recovering from the Contractor or the Contractor's Sureties any overpayments and damages it sustains by reason of the Contractor's failure to fulfill obligations under the Contract. A waiver on the part of the Department of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor is liable to the Department for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Department's rights under any warranty or guaranty.

**1721**

**Audits**

Pursuant to MN Statute § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and of any subcontractor relevant to this Contract are subject to audit and examination by the Minnesota Department of Transportation and either the Legislative Auditor or the State Auditor as may be appropriate.