

## GENERAL CONDITIONS –CONSTRUCTION IDIQ

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### **ARTICLE 1 DEFINITIONS**

Wherever used in these General Conditions, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof.

- 1.1 Addenda - Written or graphic instruments issued prior to the Bid Opening, which modify or interpret the Contract Documents.
- 1.2 Amendments - Written or graphic instruments executed after Bid Opening, which modify or interpret the Contract Documents.
- 1.3 Approval - Written approval from the Engineer.
- 1.4 Bid - The offer or proposal of the Bidder submitted in the prescribed manner on the prescribed form setting forth the prices for the Work to be performed as described in Contract documents.
- 1.5 Bidder - Any person, firm or corporation submitting a Bid for the Work.
- 1.6 Bonds - Bid Bond, Performance Bonds, Labor and Material Payment Bonds, Maintenance Bonds, and other instruments of security furnished by the Contractor and his surety in accordance with the Contract Documents.
- 1.7 Claim – A demand which seeks the payment of money, an adjustment of time, an adjustment or interpretation of any provision of the Contract Documents, or other relief arising under or relating to this Contract, including without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- 1.8 Commission - The Washington Suburban Sanitary Commission (WSSC), the Owner.
- 1.9 Construction Easement - The right, acquired through formally executed permission of the property owner, permitting the Commission to use a clearly defined strip or parcel of land across the property of others temporarily during the period of initial construction of a specified utility or facility.
- 1.10 Contract Documents - The Contract, including WSSC's Procurement Regulations, the Solicitation, Invitation for Bids, Bonds, Notice of Award, Notice to Proceed, Change Orders, Field Orders, Task Orders, Drawings, Certificate of Substantial Completion, Certificate of Final Acceptance, Specifications, these General Conditions, Special Conditions, Standard Details, Amendments, Addenda, Contract Execution Page, Appendix A from the Solicitation, Appendix B from the Solicitation, Appendix C Submissions, and Federal Contract Provisions when required.

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- 1.11 Contract Price - The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
- 1.12 Contract Time - The specific date or the number of calendar days stated in a Task Order for the substantial completion of the portion of the Work described in a Task Order.
- 1.13 Contractor - The person, firm or corporation with whom the Commission has executed the Contract.
- 1.14 Contractor's Submittals - Shall include but not be limited to all shop, layout and working drawings, diagrams, illustrations, catalog data, brochures, calculations, and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.
- 1.15 Day - A calendar day of 24 hours lasting from midnight one day to midnight the next day.
- 1.16 Drawings - The part of the Contract Documents which show the characteristics and scope of the Work to be performed and which have been prepared by or for the Commission. The term is used interchangeably with the word "Plans" and includes Standard Details, and Specifications.
- 1.17 Engineer - The authorized agent of the Commission, acting within the scope of their authority or delegated authority and the particular duties assigned.
- 1.18 Environmental Pollution - Presence and action of physical, chemical, biological, and human agents that adversely affect individual and community health and welfare; unfavorably alter or destroy ecosystems of importance to man; or degrade significant aesthetic and recreational values.
- 1.19 Federal Contract Provisions – Are federal contract provisions which are required to be included in the Contract by the federal government.
- 1.20 Field Order - A written order to the Contractor issued during construction by the Engineer for interpretations, clarifications, directives, and other instructions as to the intent of the Contract Documents.
- 1.21 Final Completion - That date as certified by the Engineer when all Work contained in the Contract Documents has been completed, including outstanding items of Work that were not required by the Engineer for the Certificate of Substantial Completion.
- 1.22 General Conditions - The Articles included in this document.

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- 1.23 Inspector - The authorized representative of the Commission assigned to make detailed inspection of any or all portions of the Work or materials.
- 1.24 Invitation for Bids - Has the same definition as WSSC Procurement Regulation § 1-201.41.
- 1.25 Latent Defect – A hidden defect in the Work that reasonably careful inspection could not reveal prior to the expiration of the maintenance bond.
- 1.26 Manufacturer - Any person or organization who changes the form of a commodity or creates a new commodity and supplies it for the Work at any tier, but who does not perform labor at the site.
- 1.27 Notice to Proceed - Written communication issued by the Commission to the Contractor authorizing him to proceed with the Work and establishing the dates of commencement and substantial completion of the Work.
- 1.28 Or Equal - A material, article or method is specified or described by using the name of a proprietary product or name of a particular manufacturer or vendor in the Contract Documents and gives the Contractor an opportunity to provide an equal substitution. Materials, articles or methods deemed equal by the Contractor which he proposes to incorporate into the Work shall be submitted with his bid in accordance with requirements set forth in the Contract Documents.
- 1.29 Pollutant - Any chemical or physical substance that when introduced into a natural aquatic, atmospheric or soil system will cause adverse impact on that system. Includes grease, oil, bitumens, sewage, salts, adhesives, fuels and, when considering aquatic or atmospheric systems, soil.
- 1.30 Project - The undertaking to be performed as provided in the Contract Documents.
- 1.31 Proper Invoice – A payment estimate which has been approved as correct by the Engineer with respect to quantity, price, delivery, lawfully deducted sums, and supporting documentation which may be required by the Contract Documents.
- 1.32 Provide - Means furnish and install, complete in place.
- 1.33 Public Utilities Easement (PUE) - An easement established, by document and dedication by recordation of a plat of subdivision, to permit the construction, maintenance, and operation of the utilities for gas, electric, telephone and cable companies. WSSC facilities are not included.
- 1.34 Right of Way - The right, acquired by a legally executed and recorded document, permitting the Commission to use a clearly defined strip or parcel across the land of others for the

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installation, construction, reconstruction, maintenance, repair, operation, and inspection, with the right of ingress and egress for a specified utility or facility, in perpetuity.

- 1.35 Rock - Any indurated material that requires drilling, wedging, blasting, or other methods of brute force to excavate.
- 1.36 Sensitive Documents: Documents and information that could reasonably be used to aid in or plan for contaminating or damaging the Commission system or Commission customers. Examples of such documents include, but are not limited to:
1. Plans/blueprints, as-built drawings, or contract documents of Commission facilities.
  2. Plans/blueprints, as-built drawings, contract documents, or 200-foot sheets of the water distribution system or the wastewater collection system.

Where there is uncertainty as to whether a document or information is “sensitive,” the Commission shall have sole discretion to make such a determination.

- 1.37 Solicitation – Has the same definition as WSSC Procurement Regulation § 1-201.65.
- 1.38 Special Conditions – A document which supplements, modifies, changes, deletes, removes, adds, or strikes any language to the General Conditions.
- 1.39 Specifications – Sections containing Scope of Work and technical requirements which are unique to a particular contract.
- 1.40 Standard Details - Commission details showing standard elements of construction, methods, and materials for use on Commission Contracts.
- 1.41 Structure - Structural entity including but not limited to building, manhole, duct bank, tank, foundation, road, pavement, pipe conductor, substation, pumping station.
- 1.42 Subcontractor - An individual, firm or corporation having a direct contract with the Contractor or with any other subcontractor at any tier for the performance of a part of the Work at the site. Subcontractor shall not mean supplier.
- 1.43 Substantial Completion - That date as certified by the Engineer when the construction of the Project or a specified part thereof is sufficiently completed in accordance with the Contract Documents so that the Project or specified part can be utilized for the purposes for which it is intended.
- 1.44 Supplier - Any person or organization who supplies materials or equipment for the Work at

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any tier, including that fabricated to a special design, but who does not perform labor at the site.

- 1.45 Task Order – A written order to the Contractor signed by the Engineer assigning portions of the Work, issuing Drawings for the portion of Work and schedule for completion of the assigned portion of Work by the Contractor.
- 1.46 Work - Any and all obligations, duties, and responsibilities necessary to the successful completion of the Project assigned to or undertaken by the Contractor under the Contract Documents, labor, materials, equipment, and other incidentals and the furnishing thereof.
- 1.47 Written Notice - Any notice to any party of the Contract relative to any part of the Contract in writing and considered delivered and the service thereof completed when posted by mail to the said party at his last given address, or delivered in person to said party or his authorized representative of the Project.
- 1.48 WSSC's Procurement Regulations – The regulations adopted by the Commission, which became effective August 1, 2012, and any subsequent amendments.

### **ARTICLE 2 FIELD ORDERS**

- 2.1 At the request of the Contractor, the Engineer may issue Field Orders that contain interpretations, clarifications, and other instructions as to the intent of the Contract Documents. In addition, the Engineer may at any time issue additional instruction, explain details of the Work and issue detail drawings in the form of Field Orders, as necessary to perform the Work required by the Contract Documents. Upon receipt of a Field Order, the Contractor shall proceed with the performance of the Work in accordance with all instructions contained therein.
- 2.2 There shall be no additional Contract Cost or Time to the Commission resulting from a Field Order unless the Contractor believes that the Field Order entitles him to a change in the Contract Price or Time or both, and so notifies the Engineer, in writing, within 7 days after receipt of the Field Order. Request for a Change Order arising out of a Field Order will not be considered without the attachment thereto of a copy of the referenced Field Order. Thereafter the Contractor shall document his position in accordance with Article 32.1 for change in the Contract Price and Time within 30 days. Failure to notify the Engineer within 7 days after receipt of the Field Order or to document the Contractor's position within prescribed time shall constitute an abandonment of all entitlement.
- 2.3 The Contractor shall proceed with the performance of the Work in accordance with the Field Order. Failure to proceed shall constitute a breach of Contract and shall be cause for termination of the Contract.

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### ARTICLE 3 SCHEDULES, REPORTS AND RECORDS

- 3.1 The Contractor shall submit to the Engineer such schedule of quantities and costs, construction progress schedules, payrolls, breakdown of lump sum items, reports, estimates, records, and other data where applicable, as are required by the Contract Documents.

### ARTICLE 4 CONTRACT DOCUMENTS

- 4.1 The intent of the Contract Documents is that the Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental Work necessary to complete the Project in an acceptable manner, ready for use, occupancy or operation by the Commission.
- 4.2 In resolving conflicts, errors, and discrepancies within the Contract Documents, the Documents shall be given precedence in the following order:

Federal Contract Provisions (only if identified and incorporated in the Contract Documents)  
WSSC Procurement Regulations  
Change Orders  
Field Orders  
Task Orders  
Amendments  
Addenda  
Special Conditions  
General Conditions  
Contract Execution Page  
Notice to Proceed  
Notice of Award  
Special Provisions  
Specifications  
Drawings  
Standard Details  
Appendix B to the Solicitation (Insurance & Bonding Requirements)  
Appendix A to the Solicitation (MBE and/or SLBE requirements)  
Appendix C to the Solicitation (Commission Forms completed by Contractor)

Division 1, General Requirements governs the execution of all Sections of the Specifications from Division 2 through Division 16. Anything mentioned in the Specifications and not shown on the Drawings or shown on the Drawings and not mentioned in the Specifications shall be of like effect as if shown or mentioned in both. Figure dimensions on Drawings shall govern over scale dimensions and detailed Drawings shall govern over general Drawings.

- 4.3 Any discrepancies found between the Drawings and Specifications or any inconsistencies or

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ambiguities in the Drawings or Specifications shall be immediately reported to the Engineer, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after his discovery of such discrepancies, inconsistencies or ambiguities prior to corrections directed by the Engineer shall be done at the Contractor's risk.

### **ARTICLE 5 CONTRACTOR'S SUBMITTALS**

- 5.1 The Contractor shall provide all submittals as may be necessary for the prosecution of the Work as required by the Contract Documents.

### **ARTICLE 6 MATERIALS, SERVICES AND FACILITIES**

- 6.1 It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.
- 6.2 Manufactured articles, materials, and equipment shall be new, and shall be stored, applied, installed, connected, erected, used, cleaned, and conditioned as directed by the manufacturer, and as approved by the Engineer. Manufactured articles, materials, and equipment shall meet all specified requirements, and their manufacturers and suppliers shall be approved by the Engineer before delivery to the Contract site. When manufactured articles, materials, and equipment, and their manufacturers and suppliers are named in the Specifications, only those named will be considered and accepted. When the named manufactured articles, materials and equipment are followed by the phrase “or equal,” the provisions of Section 01630 shall apply.
- 6.3 Deliveries of material, equipment, and supplies to the Contractor or subcontractors at the contract site shall be specifically addressed to the Contractor or Subcontractor and not to the Commission. Commission personnel will not accept deliveries for the Contractor or subcontractors.
- 6.4 Materials and equipment shall be stored to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located and stored to facilitate prompt and safe inspection. Temporary fence shall be provided, when required. All written instructions and recommendations of the manufacturer and requirements of the Engineer for lubrication, protection, and maintenance of equipment shall be performed during storage, installation, and until it is accepted as substantially complete by the Engineer. Materials and equipment damaged including those damaged internally from moisture, improper storage or otherwise shall be replaced or repaired as directed by the Engineer at no additional cost to the Commission.



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- 6.5 Materials, supplies, and equipment shall be in accordance with samples, drawings, and catalog cuts submitted by the Contractor and approved by the Engineer and shall not be delivered to the Work site prior to the Engineer's approval of samples and Contractor's submittals.
- 6.6 Materials, supplies or equipment to be incorporated into the Work shall be new and shall not be purchased by the Contractor or the Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.
- 6.7 The Contractor shall submit to the Engineer an invoice for each movable item furnished, including tools, office furniture and equipment and laboratory equipment.
- 6.8 All Work included in this Contract shall be performed in a skillful and workmanlike manner. The Contractor shall employ no plant, equipment, materials, methods or persons to which the Engineer objects, and shall remove no plant, equipment or other facilities from the site of the Work without permission of the Engineer.

### **ARTICLE 7 INSPECTION AND TESTING**

- 7.1 All materials and equipment used in the construction of the Project shall be subject to inspection and testing as required and defined in the Contract Documents.
- 7.2 If the Contract Documents, laws, ordinances, rules, regulations or order of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by someone other than the Contractor, the Contractor shall give the Engineer 10 Days notice of readiness. The Contractor shall then furnish the Engineer the required certificates of inspection, testing or approval.
- 7.3 Inspection, tests or approvals by the Engineer or others are for the sole benefit of the Commission and will not relieve the Contractor from his obligations to perform the Work in accordance with the requirements of the Contract Documents.
- 7.4 The Engineer and his representatives shall have access to the Work at all times. In addition, authorized representatives of the Commission or agents of any participating Federal, State or local agency shall be permitted from time to time, as in their sole discretion they may deem necessary, to inspect all, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. All such records shall remain available and accessible during performance of the Contract and until 3 years from the date of Final Payment, or, in case of dispute, for a period of 3 years after resolution of said dispute, whichever is later. The Contractor shall provide proper facilities for such access, observation of the Work, and any inspection or testing thereof.
- 7.5 If any Work is covered without the approval of the Engineer or contrary to requirements

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elsewhere in the Contract Documents, it shall, if requested by the Engineer, be uncovered for his observation and recovered at the Contractor's expense.

- 7.6 If the Engineer considers it necessary or advisable that approved covered Work be inspected or tested, the Contractor, at the Engineer's request, shall uncover, expose or otherwise make that portion of the Work available for observation, inspection or testing as the Engineer may require by furnishing all necessary labor, materials, tools, and equipment. If it is found that such Work is defective, the Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction and an appropriate Change Order will be issued. Any additional compensation or extension of time shall be determined as provided in Article 14.

### **ARTICLE 8 SUBSTITUTIONS**

- 8.1 Substitutions for named and specified materials, articles, and methods followed by the phrase "or equal" will only be allowed within the parameters set forth elsewhere in the Contract Documents

### **ARTICLE 9 PATENTS**

- 9.1 The Contractor shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and hold the Commission harmless from loss on account thereof, except that the Commission will be responsible for any such loss when a particular process, design or the product of a particular manufacturer or manufacturers as specified is an infringement of a patent, provided, however, that the Contractor shall be responsible for such loss unless he gives such information to the Engineer within 7 days of its receipt.

### **ARTICLE 10 SURVEYS, PERMITS, REGULATIONS**

- 10.1 Unless otherwise specified, the Engineer will furnish all boundary surveys and establish all baselines for locating the principal component parts of the Work together with suitable number of bench marks adjacent to the Work as shown in the Contract Documents.
- 10.2 Unless otherwise specified, permits, licenses, and easements for permanent structures and permanent modifications to existing facilities will be secured and paid for by the Commission.
- 10.2.1 For electrical Work, permits for permanent structures, and permanent modifications to existing facilities are not required. Permits for electrical Work of a temporary nature

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necessary for the prosecution of the Work shall be secured and paid for by the Contractor.

- 10.2.2 Plumbing or gasfitting of a temporary or permanent nature on a structure or modifications to a structure shall be performed in accordance with The Plumbing and Gasfitting Regulations of the Washington Suburban Sanitary District. The plumbing permit shall be secured by the Contractor, and will be issued by the Commission for no fee.
- 10.3 The Contractor shall give all notices and comply with all permits, laws, ordinances, rules, and regulations bearing on the conduct of the Work as shown and specified. If there is a conflict between requirements specified in the Contract Documents and the permits, laws, ordinances, rules and regulations, the requirements of the permits, laws, ordinances, rules, and regulations shall govern.
- 10.4 Should any permit, license or certificate, expire, be revoked, terminated or suspended as a result of any action on the part of the Contractor, he shall not be entitled to any additional compensation, neither will he be entitled to an extension of the Contract Time.
- 10.5 Permits obtained by the Commission for this Project are listed on the Drawings and specific requirements contained in these permits that are not covered elsewhere in the Standard Specifications and on the Drawings but are the responsibility of the Contractor will be included in the Contract Documents. A copy of the permits will be available for inspection from the Engineer.

## **ARTICLE 11 PROTECTION OF WORK, PROPERTY AND PERSONS**

- 11.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.
- 11.2 In case of suspension of Work for any cause, the Contractor shall be responsible for the Project and shall take such precautions as may be necessary to prevent damage to the Work, all material or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, provide for proper drainage, provide temporary heat, light, and other required utilities and services, and shall erect any necessary temporary structures, signs, or other facilities at his expense. In addition, the Contractor shall properly and continuously maintain in acceptable growing condition all living material in newly

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established plantings, seedings, and sodding furnished under this Contract, and shall take adequate precautions to protect new and existing growth against injury.

- 11.3 The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction. He shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. He shall notify owners of adjacent utilities when prosecution of the Work may affect them.
- 11.4 In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, shall act, at his discretion, to prevent threatened damage, injury or loss.
- 11.5 When the Commission has been notified of emergency situations requiring in the Engineer's opinion, immediate attention and rectification, the Engineer will so notify the Contractor. Should the Contractor not commence Work to rectify the situation within 1 hour after notification, the Commission may perform the required Work and deduct the costs thereof from monies owed the Contractor.

### **ARTICLE 12 SUPERVISION BY CONTRACTOR**

- 12.1 The Contractor shall supervise and direct the Work. He shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction. The Contractor shall employ and maintain on the Work a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall be able to communicate in fluent English. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times when the Work is in progress as required to perform adequate supervision and coordination of the Work as determined by the Engineer. The supervisor shall have a thorough understanding of the Contract Documents and shall have previous experience in the type of Work being performed.

### **ARTICLE 13 CHANGE ORDERS**

- 13.1 Without invalidating the Contract, the Engineer, if acting within the scope of his authority or delegated authority, may at any time or from time to time by written order and without notice to the sureties, order additions, deletions or revisions in the Work when ordered by the Engineer. These will be authorized by Change Orders. Upon receipt of the Change Order, the Contractor shall promptly and diligently proceed with the Work involved. If any Change Order causes an increase or decrease in the Contract Price, or an extension or shortening of the Contract Time, an equitable adjustment will be made as provided in Article 14, subject to the conditions hereinafter stated.

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- 13.2 The Contractor shall proceed with the performance of any changes in the Work so ordered by the Engineer. Failure to proceed shall constitute a breach of Contract and shall be cause for termination of the Contract. Should the Contractor believe that a Change Order entitles him to a change in Contract Price or Time or both, he shall give the Engineer Written Notice within 7 days after receipt of the Change Order. Thereafter the Contractor shall document his position in accordance with Article 32.1 for a change in the Contract Price or Time or both within 30 days. Failure to notify the Engineer within 7 days after receipt of the Change Order or to document the Contractor's position within prescribed time shall constitute an abandonment of any and all entitlement to a change in Contract Price and/or Time.

### ARTICLE 14 CHANGES IN CONTRACT PRICE AND TIME

- 14.1 The Contract Price may be changed only by a Change Order. The value of Work covered by a Change Order for increase or decrease in the Contract Price shall be determined in the manner provided herein, in the following order of precedence.

14.1.1 Mutually agreed upon unit prices.

14.1.2 An agreed lump sum, if supported by written cost documentation acceptable to the Engineer. If an agreed lump sum is not reached prior to initiation of the Change Order Work, the value of Work covered by the Change Order shall be determined in accordance with 14.1.3 below, unless otherwise determined by the Engineer.

14.1.3 On the basis of the Cost of the Work determined as provided below.

14.1.3.1 The Cost of the Work shall be determined as follows:

- .1 For all labor and for foremen in direct charge of the specific operations, the Contractor shall receive the actual rate of wage in effect at the time the Work is performed for each and every hour that said worker and foreman are actually engaged in such Work. Said agreed rate shall be no higher than that regularly paid the employee. A foreman shall not be used where there are fewer than 2 workers employed except with the written consent of the Engineer.

The Contractor shall receive the actual costs paid to or on behalf of workers by reason of fringe benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation, and holiday pay.

Expenses of working after hours, on holidays or on Saturdays and Sundays shall be included to the extent authorized by the Engineer.

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Subsistence and travel allowance where required by collective bargaining agreements shall be included.

- .2 For cost of materials accepted by the Engineer and used as an integral part of the finished Work, the Contractor shall receive the actual cost of such materials delivered to the Work, including transportation charges paid by him, exclusive of equipment rentals as hereinafter set forth.

For other materials used in the construction which are not an integral part of the finished Work, such as but not limited to sheeting, false Work, and form lumber, the Contractor shall be reimbursed in the amount agreed upon by the Engineer before such Work is begun. The salvage value of such material will be taken into consideration in determining the amount of reimbursement.

- .3 Cost of construction equipment shall be based on the actual time the equipment is required to perform the Work and shall not exceed 8 hours per day unless equipment is in operation for a longer time. Moving time, loading, unloading, and hauling will not be paid for if the equipment is used at the site for other Work.

For the use of equipment moved in on the Work and used exclusively for the Work covered by the Change Order, the Contractor will be paid the rates herein specified including moving time, loading, unloading, and hauling. The time period shall begin at the time the equipment is unloaded at the site of the Work, shall include each day or fraction thereof that the equipment is at the site of the Work, excluding Saturdays, Sundays, and other legal holidays unless the Work is performed on such days, and shall terminate at the end of the day on which the Engineer directs the Contractor to discontinue the use of such equipment.

The rates of payment for equipment used, regardless if owned or rented, including fuel and lubricants but excluding operators, shall be established using cost documentation acceptable to the Engineer.

No payment will be made for the small tools defined as individual pieces of equipment or tools having a new value of \$1,000 or less.

When the Commission is obligated to pay for idle equipment, the allowance will be 50 percent of the rate determined herein.

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.4 For cost of premiums for additional bonds and insurance required because of changes in the Work, the Contractor shall receive the actual cost. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond and insurance.

.5 The Cost of the Work shall not include any of the following.

Payroll costs and other compensation of the Contractor's Officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, superintendents, foremen not engaged in the Work, timekeepers, clerks, and other personnel employed by the Contractor whether at the site or in the Contractor's principal or branch office, all of which are to be considered overhead costs covered by the Contractor's Fee.

Costs due to the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Article 14.1.3.1.1 thru 14.1.3.1.4.

.6 Cost of Subcontractors used on the Work shall be computed in the manner set forth hereinabove in Article 14.1.3.1.1 thru 14.1.3.1.5. Subcontractor's Fee shall be as provided in Article 14.1.3.2.1 and 14.1.3.2.3.

.7 No payment will be made until the Contractor furnishes the Engineer itemized statements of the Cost of the Work detailed as to the following:

Name, classification, date, daily hours, total hours, rate, and extension for each worker, foreman.

Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

Quantities of materials, prices including transportation cost and extensions.

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Cost of bonds and insurance premiums.

Requests for payment shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the Work are not specifically purchased for such Work but are taken from the Contractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost.

.8 Labor, material, and equipment usage reports shall be furnished daily to the Engineer, signed by both parties.

14.1.3.2 The Contractor's Fee allowed to the Contract for overhead and profit shall be determined as follows:

.1 For costs incurred under Article 14.1.3.1.1 and 14.1.3.1.2, the Contractor's Fee shall be 15 percent.

.2 For cost incurred under Article 14.1.3.1.6, the Contractor's Fee shall be a single allowance of 5 percent regardless of the tier of the subcontractor.

.3 No fee shall be payable on the basis of costs itemized under Article 14.1.3.1.3 and 14.1.3.1.4.

.4 The Contractor's Fee shall be calculated in the same manner for both additive and deductive changes in the contract.

14.1.3.3 If directed, the Contractor shall submit to the Engineer 3 qualified bids for extra or changed Work and materials, if similar Work is not being performed at the Project site.

14.1.4 The Contract Time may be changed only by a Change Order. Extensions of time, when granted, will be based upon the effect of delays to the Work as a whole. Extensions of time will not be granted for noncontrolling delays to portions of the Work unless it can be shown that such delays did in fact delay the progress of the Work as a whole. Request for time extension shall be accompanied by a revised construction schedule or portion thereof, demonstrating the delay to the progress of the Work as a whole. Extensions of time will not be granted until the Engineer is



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satisfied that the time extension is appropriate and justified. Said extension of time shall be the Contractor's sole and exclusive remedy.

- 14.1.5 No Damages For Delay: The Contractor shall not be entitled to any costs for delay, disruption, suspension, or extension of time, or resulting labor productivity losses, constructive acceleration, ripple effects, cumulative impacts, overheads, profits, indirect costs, or other alleged damages of any nature or kind, even if not in the contemplation of the parties at the time the Contract Documents were executed, the Contractor acknowledges that the Contract Price is full consideration for all such damages, costs, or losses.

### ARTICLE 15 TIME FOR SUBSTANTIAL COMPLETION AND LIQUIDATED DAMAGES

- 15.1 The date of beginning and the time for substantial completion of the Work are essential conditions of the Contract Documents and the Work embraced shall be commenced on the date specified in the Notice to Proceed. Time is of the essence for all periods of time specified in the Task Orders.
- 15.2 The Contractor shall proceed with the Work at such rate of progress to ensure substantial completion within the Contract Time. It is expressly understood and agreed by and between the Contractor and Commission that the Contract Time for the substantial completion of the Work described herein is a reasonable time, taking into consideration the average climate and economic conditions and other factors prevailing in the locality of the Work.
- 15.3 If the Contractor shall fail to substantially complete the Work within the Contract Time, or extension of time granted by the Engineer, then the Contractor shall pay to the Commission the amount for liquidated damages as specified in the Contract Documents for each calendar day that the Contractor shall be in default after the time or date stipulated thereon; and the Commission may deduct the same from monies due from current progress payments or to become due to the Contractor otherwise.
- 15.3.1 Should the Contractor abandon performance of the Work, the Commission shall have the right to complete the Work with its own or other forces, and the liquidated damages provisions set forth herein as well as other provisions of the Contract shall remain in effect; and such liquidated damages provisions shall not be construed to be a substitute for damages caused by increased cost of the Work but shall be compensatory only for delay in substantial completion of the Contract.
- 15.4 This Article does not exclude the recovery of damages by either party under other provisions of the Contract Documents.
- 15.5 The Contractor will not be charged with liquidated damages or any excess cost when the delay in substantial completion of the Work as a whole is a controlling delay due to the

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following unforeseeable causes, and the Contractor has given Written Notice of such delay including reasons therefore to the Engineer within 7 days of the occurrence. Thereafter, the Contractor shall document his position in accordance with Article 32.1 for unforeseeable cause in delay within 30 days. Failure to notify the Engineer within 7 days or to document the Contractor's position within prescribed time shall constitute abandonment to a change in Contract Time pursuant to Article 14.1.4.

- 15.5.1 To unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God or of the public enemy, acts of the Commission, acts of another Contractor in the performance of a contract with the Commission, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers.
- 15.5.2 An extension of Contract Time pursuant to Article 14.1.4 shall be the Contractor's sole and exclusive remedy if he can establish an unforeseeable cause beyond the control and without the fault or negligence of the Contractor occurred.
- 15.5.3 No Damages For Delay: The Contractor shall not be entitled to any costs for delay, disruption, suspension, or extension of time, or resulting labor productivity losses, constructive acceleration, ripple effects, cumulative impacts, overheads, profits, indirect costs, or other alleged damages of any nature or kind, relating to or arising from the unforeseeable cause. The Contractor acknowledges that the Contract Price is full consideration for all such damages, costs, or losses, even though such damages, costs, and losses may not have been contemplated by the parties at the time the its Bid was submitted or the Contract was executed.

### **ARTICLE 16 CORRECTION OF WORK**

- 16.1 The Contractor shall promptly remove from the premises all Work rejected by the Engineer for failure to comply with the Contract Documents whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Commission and shall bear the expense of making good all Work of other Contractors destroyed or damaged by such removal or replacement.
- 16.2 All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected Work within 10 days after receipt of Written Notice, the Engineer may remove such Work, store the materials, and replace the rejected Work at the expense of the Contractor.
- 16.3 Any Work which may be done or materials ordered by the Contractor prior to receipt of the

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Notice to Proceed, incorporation of previously rejected Work, Work done contrary to or regardless of the instructions of the Engineer, Work done beyond the limits shown on the Plans, except as herein specified, or any extra Work done without written authority from the Engineer, will be considered as unauthorized and may not be paid for. Work so done may be ordered removed or replaced at the Contractor's expense.

### **ARTICLE 17 CHANGED CONDITIONS**

- 17.1 The Contractor shall within 7 days, and before such conditions are disturbed, except in the event of an emergency, notify the Engineer by Written Notice of:
- 17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or
  - 17.1.2 Unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered, and generally recognized as inherent in Work of the character provided for in the Contract Documents.
  - 17.1.3 The provisions of 17.1.1 and 17.1.2 shall not apply to rock and/or water conditions that may be encountered during the construction of this Project. The provisions set forth in General Conditions, Article 18, "Physical Data," or the appropriate sections of the Contract Documents, including Drawings and/or Specifications shall be applicable.
- 17.2 The Contractor shall document his position in accordance with Article 32.1 for changed conditions within 30 days of Written Notice. Failure to notify the Engineer within 7 days or to document the Contractor's position within prescribed time shall constitute an abandonment of all entitlement. The Engineer will promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the cost of, or in the time required for performance of the Work, an equitable adjustment will be made and the Contract Documents will be modified by a Change Order as provided in Article 14.

### **ARTICLE 18 PHYSICAL DATA**

- 18.1 Each Bidder shall determine to their own satisfaction the actual subsurface conditions including the character and type of soil and other material he will encounter in the Work to be done under the Contract.

Information and data referred to herein is available for the Contractor's information and for whatever use the Contractor may find therefore. The information is made available in order that the Contractor may have the same information as is available to the Commission for design purposes. The subsurface and other physical data such as those mentioned herein and contained in the Contract Documents or otherwise made available to the Contractor by the

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Commission are not intended as representations or warranties, nor guaranteed to be more than a general indication of the material to be found at the individual boring locations. It is expressly understood that the Commission will not be responsible for the completeness thereof, nor for any deductions, interpretations or conclusions drawn therefrom, including specifically the physical conditions between boring locations. The provisions of Article 17.1.1 and 17.1.2 shall not apply to rock and/or water conditions that may be encountered during construction of this Project.

18.1.1 The Commission has conducted subsurface test borings in the area where the Work will be performed. Resultant data obtained from these borings and a geotechnical report are in the Contract Documents. It shall be understood that this information was obtained during the preparation of the Contract Documents and is not guaranteed to be more than a general indication of the material likely to be found adjacent to the boring holes, and that the Commission or its consultant do not warrant that material encountered beneath the ground surface is homogeneous or uniform. Bidders are advised to independently evaluate or to have the data and interpretations independently evaluated by someone qualified in this technical field before using for bidding purposes because the bidder is solely responsible for this evaluation. Conclusions and recommendations included in the geotechnical report are not intended to restrict the Contractor from selecting the method of dewatering, excavating, or sheeting and shoring he will utilize. The report is included herein as information available to the Contractor for evaluation when selecting his method of dewatering, excavating, sheeting and shoring because the Contractor is solely responsible for the method of dewatering, excavating, and sheeting and shoring he elects to use, unless otherwise indicated in the Contract Documents.

### ARTICLE 19 SUSPENSION OF WORK AND TERMINATION

19.1 The Engineer may order the Contractor in writing to suspend or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the Commission's convenience.

19.1.1 If the performance of all or any part of the Work is, for an unreasonable period of time, suspended or interrupted by a written order of the Engineer in administration of this Contract, an equitable adjustment will be made in accordance with Article 14, and the Contract modified by Change Order accordingly. However, no adjustment shall be made under this clause for any suspension or interruption to the extent: (1) that performance would have been so suspended or interrupted by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of these Contract Documents.

19.2 The Contract may be terminated for default in accordance with WSSC Procurement Regulation § 6-105.03. A material breach of the Contract shall include but not be limited to

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the following events: the Contractor is adjudged bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to subcontractors for labor, materials or equipment, or if he refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure its substantial completion within the Contract Time, or if he fails to complete said Work within said time, or if he disregards laws, ordinances, rules, regulations, directions or orders of any public body having jurisdiction over the Work, or if he disregards the authority of the Engineer, or if he otherwise violates any provision of the Contract Documents.

- 19.3 The Contract may be terminated for convenience in accordance with WSSC Procurement Regulation § 6-105.04.
- 19.4 The Contract may be terminated by mutual consent in accordance with WSSC Procurement Regulation § 6-105.05.
- 19.5 Where the Contractor's services have been terminated by the Commission, said termination shall not affect any right of the Commission against the Contractor then existing or which may thereafter accrue. Any retainage or payment of monies by the Commission due the Contractor will not release the Contractor from compliance with the Contract Documents.
- 19.6 If through no act or fault of the Contractor, the Work is suspended for a period of more than 90 days by a written order of the Engineer or under an order of court or other public authority, then the Contractor may, after 10 days from delivery of Written Notice to the Engineer, terminate the Contract and recover from the Commission payment for all Work performed and accepted and all allowable expenses incurred up until the time of the delivery of Written Notice to the Engineer.

### **ARTICLE 20 USE OF THE PREMISES**

- 20.1 The Commission will have the right to enter the premises for the purpose of doing Work not covered by the Contract Documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the Work or the restoration of any damaged Work, except such as may be caused by agents or employees of the Commission.
- 20.2 Unless otherwise specified, with the concurrence of the Contractor the Commission may use any completed or substantially completed portion of the Work. Such use shall not constitute an acceptance of such portions of the Work.

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### ARTICLE 21 SUBSTANTIAL COMPLETION

- 21.1 The Contractor shall not be entitled to a certificate of Substantial Completion for a piece of equipment, a portion of the Work, or the Work unless and/or until the Engineer in his sole discretion determines a piece of equipment, a portion of the Work, or the Work is ready for service. That piece of equipment, portion of the Work, or the Work shall be inspected and tested in accordance with the Contract Documents and when accepted, a Certificate of Substantial Completion will be issued. Upon issuance of the Certificate of Substantial Completion by the Engineer, it shall be placed into beneficial operation unless otherwise directed by the Engineer. The date of Substantial Completion shall be the effective commencement date for any guarantee applicable to the specific equipment, portion of Work, or the Work. The Contractor shall be advised of operation and maintenance responsibility for specific equipment, portion of the Work, or the Work commencing with the date of Substantial Completion.
- 21.2 All written conditions of the Certificate of Substantial Completion are binding to the Contractor. Failure to comply with such conditions within the time stated therein will be cause for rescission of the Certificate of Substantial Completion and rescission of commencement of the guarantee, or performance of the remaining work by the Commission or others at the Contractor's expense 10 days after receipt of Written Notice by the Contractor. Substantial Completion and commencement of the guarantee may be reinstated upon reissuance of the Certificate of Substantial Completion by the Engineer as set forth above.
- 21.3 A Certificate of Substantial Completion does not relieve the Contractor of his responsibility under any of the provisions of these Contract Documents unless explicitly noted herein and/or in the written Certificate of Substantial Completion.
- 21.4 Written consent of Surety and endorsement from the insurance carrier or carriers permitting prior occupancy or use of any completed or partially completed portions of the Work by the Commission shall be secured and submitted to the Engineer prior to issuance of Certificate of Substantial Completion.
- 21.5 Until approval of the final estimate for each assigned Task Order by the Commission, it shall be the Contractor's responsibility to protect and insure all portions of the Work in beneficial operation against damages resulting from vandalism, theft, floods, fires, and malfunction due to other equipment or Work not yet placed into beneficial operation, unless such damage is the direct result of negligence on the part of Commission personnel or fair wear and tear. Should repairs be required due to any reasons other than the exceptions stated above, they shall be performed at no expense to the Commission, and the guarantee commencement date shall be modified to coincide with the date of re-acceptance in accordance with the provisions set forth herein. Should the Contractor be unable to perform repairs, the Engineer may direct that the necessary repairs be performed by others, and the cost therefor be deducted from monies owed the Contractor. In such a case, the guarantee commencement date shall be

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modified to coincide with the date of completion of repairs by others.

### **ARTICLE 22 PAYMENTS TO THE CONTRACTOR**

- 22.1 At least 10 days before each progress payment falls due, but not more often than once a month, the Contractor shall submit to the Engineer a partial payment estimate form provided by the Commission, filled out in ink or typewritten and signed by the Contractor, covering Work performed during the period of the partial payment estimate and supported by such data as the Engineer may reasonably require, less sums as may be lawfully deducted by the Commission. If payment is requested on the basis of materials and equipment not incorporated in the Work, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the Engineer, as will protect the Commission's interests therein, including applicable insurance. The Engineer will, within 10 days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate for processing, or return the partial payment estimate to the Contractor indicating in writing his reasons for not approving payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The Commission will, within 10 days of an Engineer approved partial payment estimate, pay the Contractor a progress payment on the basis of the approved partial payment estimate.
- 22.2 If payment is requested on the basis of materials and equipment not incorporated in the Work, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the Engineer, as will protect the Commission's interests therein, including applicable insurance. The Engineer will, within 10 days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate for processing, or return the partial payment estimate to the Contractor indicating in writing his reasons for not approving payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Commission's receipt of a Proper Invoice from the Contractor.
- 22.3 In accordance with the Maryland Little Miller Act, Maryland Annotated Code, State Finance and Procurement, § 17-110(b)(1)-(2), the Commission shall retain 5 percent of the amount of each payment. In addition to retainage, the Commission may withhold from payments otherwise due to the Contractor any amount that the Commission reasonably believes necessary to protect its interests.
- 22.4 No payments for installation of equipment requiring Operation and Maintenance Manuals will be made prior to receipt of final approved copies of the Operation and Maintenance Manuals. Failure to maintain Contractor required record drawings current will be cause to delay progress payments.
- 22.5 If the Engineer fails to respond to any payment estimate within 30 days after it is submitted,

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or the Commission fails to pay the Contractor substantially the sum approved by the Engineer within 30 days of its approval and presentation, the Contractor may upon 10 days Written Notice to the Engineer stop the Work until he has been paid all amounts then due, in which event Change Orders will be issued for adjusting the Contract Price, extending the Contract Time, or both to compensate for the costs and delays attributable to the stoppage of the Work.

- 22.6 No payments shall be made for material or equipment not yet incorporated in the Work.
- 22.7 Prior to making a request for final payment, the Contractor shall have completed all Work as defined under a Task Order.

The Engineer will issue a Certificate of Final Acceptance attached to the final payment request with a copy sent to the Contractor that the Work has been accepted by him under the conditions of the Contract Documents. The entire balance found to be due the Contractor, including the retained percentages but except such sums as may be lawfully deducted by the Commission, will be paid to the Contractor within 30 days of final completion and acceptance of the Work. In accordance with the Maryland Little Miller Act, Maryland Annotated Code, State Finance and Procurement, § 17-110(b)(5), if there is a dispute or Claim between the Contractor and the Commission concerning the satisfactory completion of this Contract, the Commission shall release the retainage to the Contractor within 120 days after the resolution of the dispute or Claim.

- 22.8 The Contractor shall furnish to the Engineer, a Maintenance Bond as described in Article 25, to be in effect for the guarantee period(s) set forth in Article 31.
- 22.9 The Contractor shall indemnify and hold the Commission and its agents harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies incurred in the furtherance of the performance of the Work. The Contractor shall, at the Engineer's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged or waived. If the Contractor fails to do so the Commission may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor will be resumed in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Commission to either the Contractor, his Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Commission will be considered as a payment made under the Contract Documents by the Commission to the Contractor and the Commission will not be liable to the Contractor for any such payments made in good faith.



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### ARTICLE 23 ACCEPTANCE OF FINAL PAYMENT AS RELEASE

- 23.1 The acceptance by the Contractor of final payment shall be and shall operate as a release to the Commission from any and all claims of any nature and all liability to the Contractor, for all things done or furnished in connection with the Work, and for every act and neglect of the Commission and others relating to or arising out of this Work.
- 23.2 The Commission shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the final completion and acceptance of the Work and payment therefor, from showing the true amount and character of the Work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor from showing that the wWork or materials do not in fact conform to the Contract. The Commission shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate, and payment in accordance therewith, from recovering from the Contractor or his Sureties, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract.
- 23.3 Neither the acceptance by the Commission or any representative of the Commission nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the Commission, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to recover damages. The waiver of any breach of the Contract shall not be held to be waiver of any other or subsequent breach.

### ARTICLE 24 INSURANCE

- 24.1 The Contractor shall within the time specified in the Contract Documents purchase and maintain insurance as specified in the Contract Documents. The Contractor shall submit proof of insurance as required by the Contract Documents.

### ARTICLE 25 CONTRACT SECURITY

- 25.1 The Contractor shall within the time specified in the Contract Documents provide the Commission with a Performance Bond, a Labor and Material Payment Bond, and Letter of Intent to Issue Maintenance Bond in penal sum equal to 100 percent of the Contract Price. Bonds shall be conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions, and agreements of the Contract Documents, and upon the prompt payment by the Contractor to all persons supplying labor, materials, and services in the prosecution of the Work provided by the Contract Documents. Such Bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State of Maryland and named on the current “Listing of Approved Sureties” as published in the Treasury Department Circular Number 570. The expense of these Bonds shall be borne by the Contractor. If at any time a Surety on any such Bond is declared bankrupt or loses its right to do business in the State of Maryland or is removed from the

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Listing of Approved Sureties, the Contractor shall within 10 days after notice from the Surety Company, substitute an acceptable Bond (or Bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Commission. The premiums on such Bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable Bond to the Commission.

- 25.2 Should the Contract Price be increased by 25 percent or more before Final Acceptance, the amount of the Maintenance Bond shall be increased accordingly.

### **ARTICLE 26 ASSIGNMENTS**

- 26.1 Neither the Contractor nor the Commission shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of both parties.

### **ARTICLE 27 INDEMNIFICATION**

- 27.1 The Contractor shall defend, indemnify, and hold harmless the Commission, its agents, and employees from and against any and all claims, suits in law or equity, actions, damages, losses and expenses of every name and description, including attorneys' fees to which the Commission, its agents, and employees may be subject or put by reason of injury to persons (including bodily injury, death or any other form of personal injury) or property damage arising out of or resulting from the performance of the Work whether caused or alleged to be caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by the Commission, its agent or employees, the party indemnified hereunder, or other cause.
- 27.2 Monies due or to become due the Contractor under the Contract as may be considered necessary by the Commission shall be retained by the Commission until such suits or claims for damages shall have been settled or otherwise disposed of or satisfactory evidence to that effect has been furnished to the Commission.

### **ARTICLE 28 SEPARATE CONTRACTS**

- 28.1 The Commission reserves the right to let other contracts in connection with this Project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials, the execution of their Work, and shall properly connect and coordinate his Work with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the Work of any other Contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such Work that render it unsuitable for such proper execution and results.

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28.2 The Commission may perform additional Work related to the Project by itself, or it may let other contracts containing provisions similar to these. The Contractor shall afford the other Contractors who are parties to such contracts, and the Commission, if it is performing the additional Work itself, reasonable opportunity for the introduction and storage of materials and equipment, the execution of Work, and shall properly connect and coordinate his Work with theirs.

### ARTICLE 29 SUBCONTRACTING

29.1 The services of specialty subcontractors may be utilized on those parts of the Work which, under normal contracting practices, are performed by specialty subcontractors within the parameters set forth herein and in the Contract Documents.

29.1.1 Before entering into any subcontracts, the Contractor shall submit a written statement to the Engineer giving name and address of the proposed subcontractor, manufacturer or supplier, the Work and material that he is to perform and furnish, and shall further certify that the proposed subcontractor, manufacturer or supplier has the necessary facilities, skill, integrity, past experience and financial resources to perform the portion of the Work stated in accordance with requirements of the Contract.

29.1.2 No substitution for any subcontractor, manufacturer or supplier, person or entity previously selected by the Contractor shall be made without written notification to the Engineer.

29.2 The Contractor shall not award Work to subcontractors in excess of 75 percent of the Contract Price.

29.3 The Commission will require all Contractors to report subcontractor/supplier payments on a monthly basis utilizing the WSSC's Web-Based Compliance System. The Contractor shall enter all payment information within 30 days of receipt of payment from WSSC until final payment, and the subcontractor(s)/supplier(s) shall validate payment received within 30 days of receipt of payment from the Contractor until final payment. Instructions on entering data are located on WSSC's website at: <http://www.wsscwater.com/home/jsp/content/slmbe-program.faces>

29.4 Failure to report payments on WSSC's Web-Based Compliance System, as described above, will result in delay in payment(s). Final payment may not be made until all subcontractor payment(s) are reported and verified.

29.5 Failure to comply with the requirements herein will be considered in the evaluation of the Contractor's responsibility in performing future contracts.

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- 29.6 No additional compensation will be allowed for a company not meeting the requirements of this section.
- 29.7 Questions concerning WSSC's Web-Based Compliance System shall be directed to the SLMBE Office at 301-206-8800 or email at [wsscwebcompliance@wsscwater.com](mailto:wsscwebcompliance@wsscwater.com).
- 29.8 The Contractor shall report the use of subcontractors, manufacturers, and suppliers during the course of the Contract as set forth in the Contract Documents.
- 29.9 The Contractor shall be fully responsible to the Commission for the acts and omissions of his subcontractors, manufacturers, suppliers, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- 29.10 The Contractor shall be fully responsible for the coordination of the Work of the trades, subcontractors, manufacturers and suppliers, and their officers, agents, and employees.
- 29.11 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the Work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Commission may exercise over the Contractor under any provision of the Contract Documents.
- 29.12 All subcontractors shall be specifically bound by the terms of Article 7.4.
- 29.13 Nothing contained in the Contract Documents shall create any contractual arrangement between any subcontractor and the Commission.

### **ARTICLE 30 ENGINEER'S AND INSPECTOR'S AUTHORITY**

- 30.1 The Engineer will act as the Commission's representative during the construction period and decide questions which may arise as to quality and acceptability of materials furnished and Work performed. The Engineer will within a reasonable time, make decisions relative to interpretation of the Contract Documents in a fair and unbiased manner, and will make visits to the site and determine if the Work is proceeding in accordance with the Contract Documents.
- 30.2 The Contractor shall be held strictly to the intent of the Contract Documents in regard to the quality of materials, workmanship, and execution of the Work. Inspections may be made at the factory or fabrication plant of the source of material supply.
- 30.3 The Engineer will not be responsible for construction means, controls, techniques, sequences, procedures or construction safety.

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### 30.4 Authority and Duties of Inspectors

- 30.4.1 Inspectors are authorized agents of the Engineer and shall be authorized to inspect all Work done and all material furnished. Such inspection may extend to any part or all of the Work, including the preparation, fabrication or manufacture of the materials to be used. The presence or absence of an Inspector does not relieve the Contractor from any requirements of the Contract Documents. The Inspector is not authorized to revoke, alter or waive any requirements of the Contract, nor is he authorized to approve or accept any portion of the complete Project. He is authorized to call the attention of the Contractor to any failure of the Work or materials to conform to the Contract. He will have the authority to reject materials or suspend the Work until any questions at issue can be referred to and decided by the Engineer. Inspectors will perform their duties at such times and in such manner as will not unnecessarily impede progress of the Contract.
- 30.4.2 The Inspector will not act as foreman or perform other duties for the Contractor, nor interfere with the management of the Work by the latter. Any advice which the Inspector may give the Contractor shall not be construed as binding the Engineer in any way, or releasing the Contractor from fulfilling all of the terms of the Contract.
- 30.4.3 Where there is disagreement between the Contractor and the Inspector, such as refusal by the Contractor to use properly approved materials, for performing Work not in compliance with the Contract Documents, or refusing to suspend Work until problems at issue can be referred to a decision by the Engineer, the Inspector will immediately direct the Engineer's attention to the issues of disagreement, and if the Contractor still refuses to make corrections, comply or suspend Work, the Engineer will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order stopping the Work and explaining the reason for such shutdown. As soon as the Inspector is advised of the delivery of the shutdown order, the Inspector will immediately leave the site of the Work. Work performed after the issuance of the shutdown order will not be accepted or paid for and may be required to be removed and disposed of at the Contractor's expense.

### ARTICLE 31 GUARANTEE

- 31.1 The Contractor shall furnish a Maintenance Bond in accordance with Article 25 to guarantee all materials and equipment furnished and Work performed for a period of 1 year from the date(s) of substantial completion, except that (1) those items listed as exceptions on the certificate(s) of substantial completion shall be so guaranteed for a period of 1 year from the date of Final Completion and (2) those items where longer guarantee provisions are required. The Contractor warrants and guarantees that the completed Work is free from all defects due to faulty materials, equipment, and workmanship. This shall include but not necessarily be limited to the following.

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- 31.1.1 Against all faulty or imperfect materials and equipment, subsidence of backfills, fills and embankments, vegetation stabilization, and against all imperfect, careless and/or unskilled workmanship.
- 31.1.2 That the Work performed under this Contract, including all mechanical and electrical equipment, and appurtenances, and each and every part thereof, shall operate, with proper care and maintenance, in a satisfactory and efficient manner in accordance with the requirements of these Contract Documents. Where manufacturer's equipment warranty(s) are required elsewhere herein, said equipment warranty shall name the Commission as a beneficiary, and the Contractor shall furnish the Commission with a copy of the manufacturer's equipment warranty.
- 31.1.3 That the structures shall be watertight and leak-proof at every point and in every joint.
- 31.1.4 No use or acceptance by the Commission of the Work or any part thereof, nor any failure to use same, nor any repairs, adjustments, replacements, or corrections made by the Commission due to the Contractor's failure to comply with any of his obligations under the Contract Documents, or other corrections made by the Commission shall impair in any way the guarantee obligations assumed by the Contractor under these Contract Documents.

The Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the Work resulting from such defects and agrees to replace with proper workmanship, materials, equipment, and re-execute, correct or repair without cost to the Commission, any Work which may be found to be improper or imperfect and/or which does not operate in a satisfactory manner and fails to perform as specified, or in any other way does not conform to the Contract Documents, unless such damage is the direct result of negligence on the part of Commission personnel, or fair wear and tear. The Commission will give notice of observed defects with reasonable promptness. In the event that the Contractor fails to make such repairs, adjustments or other work that may be made necessary by such defects, the Commission may do so and charge the Contractor the cost thereby incurred.

- 31.2 Latent defects will not be considered to be included in the Work covered by the one-year maintenance bond. The guarantee provisions specified herein shall not limit the Commission's right to recover damages for the Contractor's refusal to repair defective Work after the expiration of the Maintenance Bond and the guarantee provisions specified herein.

## **ARTICLE 32 CLAIMS AND DISPUTES**

- 32.1 Any Claim by the Contractor against the Commission arising under or relating to this

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Contract shall be filed and adjudicated in accordance with the requirements and procedures set forth in WSSC Procurement Regulation § 6-104.01.

- 32.2 Any Claim by the Commission against the Contractor arising under or relating to this Contract shall be filed in the federal or state courts located in Prince George’s County, Maryland or Montgomery County, Maryland. However, the Commission may assert any set-off amount in any matter filed pursuant to Article 32.1.
- 32.3 This Contract and any Claim arising under or relating to it shall be governed in accordance with the law of the State of Maryland.
- 32.4 The Contractor shall diligently carry on the Work and maintain the progress schedule during any dispute, appeal, or court proceeding arising from or related to a Claim.
- 32.5 With regard to any Claim submitted in accordance with Article 32, the Contractor shall (1) allow the Engineer, or his representatives, including but not limited to attorneys, third parties hired by the Engineer, such as outside auditors, the right to interview employees and witnesses, examine and audit all books, records, documents, and supporting materials, including computations and projections, in order to evaluate the accuracy, completeness and currency of the costs being claimed and the facts asserted, (2) make available at his office at reasonable times, material and persons described above for interview, examination, audit or reproduction, and (3) shall obtain from all subcontractors and suppliers, and file with its initial claim, authorization for the Engineer to examine and audit all subcontractor costs and facts included in the claim. In addition, the amounts included in the claim shall be limited to the actual direct costs incurred and paid by the Contractor and supported by such accounting records as job cost reports, payroll journals, paid invoices, cancelled checks and ledgers.

### **ARTICLE 33 TAXES**

- 33.1 The Contractor shall pay all sales, consumer, use, and other similar taxes required by the law of the place where the Work is performed. Pursuant to MD Code, Tax-General, § 11-210(b)(3), sales and uses taxes may not apply to certain purchases made by the Contractor. The Contractor is solely responsible for determining whether or not a sales or use tax exemption is applicable. The Commission is prohibited by Maryland law from providing any sales tax exemption certificate to the Contractor.

### **ARTICLE 34 ETHICS**

- 34.1 Personnel of the Commission and the Contractor and its personnel and agents shall be guided in their actions by the WSSC Code of Ethics; Resolution No. 2003-1669 adopted June 11, 2003, and any subsequent revisions and amendments thereto. Additionally, standards for ethical, professional procurement behavior such as established by the Institute for Supply Management (formerly NAPM) entitled “Principles and Standards of Ethical Supply

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Management Conduct” are to be followed. Both documents are available for review in the Office of Chief Procurement Officer. See abstract in the attachment section entitled “Ethics in Public Contracting.”

- 34.2 In accordance with Section 3-3 of WSSC’s Code of Ethics, a former Commissioner or employee may not act as an agent or representative of any person or entity involved in a business transaction with WSSC for a period of 12 months from the date of the former employee’s separation from the Commission. In addition, a former Commission employee is barred from assisting or representing a party in a business transaction with WSSC if the former employee participated significantly in the matter as an employee.

### **ARTICLE 35 BRIBES**

- 35.1 A bribe or attempt to bribe any employee or officer of the Commission by the Contractor shall be considered a fraudulent and bad faith act, and shall thus empower the Commission to invoke its rights pursuant to WSSC Procurement Regulation § 6.103.02.

### **ARTICLE 36 ABUSE, USE, SALE OR POSSESSION OF DRUGS OR INTOXICANTS**

- 36.1 The use, possession, sale or distribution of drugs or intoxicants by the Contractor, a subcontractor, or any of their employees while on Commission premises or while actively representing or performing Work for the Commission is prohibited. It shall be the responsibility of the Contractor to prevent such activities and to remove any employee or subcontractor employee whose ability to perform appears to be affected by the use of drugs or intoxicants. Failure of the Contractor to comply with this provision may result in Termination of the Contract.

### **ARTICLE 37 SEXUAL HARASSMENT**

- 37.1 Sexual harassment by the Contractor, a subcontractor, or any of their employees while on Commission premises or while actively representing or performing Work for the Commission is prohibited. It shall be the responsibility of the Contractor to prevent any such acts and to remove any employee who conducts such acts. Failure of the Contractor to comply with this provision may result in Termination of the Contract. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment. Basic criteria for determining unlawful behavior includes conduct that has the purpose or effect of unreasonably interfering with an individual's Work performance or creating an intimidating, hostile, or offensive working environment.

### **ARTICLE 38 DEBARMENT AND SUSPENSION**

- 38.1 Debarment and suspension actions taken against a contractor will be done in accordance with WSSC Procurement Regulation § 6-102.



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### ARTICLE 39 NONDISCRIMINATION POLICY

- 39.1 Discrimination in any manner against any employee or applicant for employment by the Contractor or a subcontractor on the basis of sex, race, creed, color, age, mental or physical handicap, sexual orientation, or national origin is prohibited.
- 39.2 The Contractor shall include a similar nondiscrimination clause in all subcontracts.
- 39.3 If the Contractor fails to include a nondiscrimination clause in a subcontract, the Commission shall provide a reasonable opportunity to cure the defect. If the Contractor fails to cure the defect within the time period granted, the Commission may declare the contract void and the Contractor shall be entitled to the reasonable value of Work that has been performed and materials that have been provided to date. If the Contractor cures the defect, the Contract remains in force according to its revised terms.
- 39.4 If the Contractor willfully fails to comply with the requirements of the nondiscrimination clause, the Commission may compel the Contractor to continue to perform under the Contract as provided in Maryland Annotated Code, Public Utilities, § 20-106(b).

### ARTICLE 40 ACCESS TO WSSC FACILITIES AND INFRASTRUCTURE

- 40.1 Prior to beginning Work on any Commission project, the Contractor must complete and submit background investigation applications for all participants in the project, regardless of whether subjects will be participating in the project at Commission facilities or off-site. Background investigations shall be completed by the Commission's investigative agency. Investigative results will be reviewed by the Commission to determine the suitability to Work on Commission property or projects. Like investigations must be submitted for all replacement participants prior to beginning Work. The Commission reserves the right to reject any employee, Subcontractor or the Contractor as a result of the findings of background investigations.
- 40.2 Commission will additionally be provided with the name, address, home phone number, and date of birth for all the Contractor's project participants prior to the project's commencement. The list shall be updated regularly to accurately reflect the current complement.
- 40.3 The Contractor's project participants shall be issued photo identification cards. Identification cards must be worn at all times while on any Commission property. Contractor employees found on-site without proper identification will be immediately removed from Commission property. The design of identification cards shall be reviewed and approved by the Commission prior to issuance. Identification cards for employees who are no longer associated with the project, for any reason, will be immediately recovered by the Contractor. The Contractor is responsible to control and inventory all identification cards issued so that

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cards are not obtained or used by unauthorized individuals.

- 40.4 All project participants needing either electronic or hardcopy Sensitive Documents or information will be required to make application with, and receive approval from the Commission prior to receiving this information. Permission to receive Sensitive Documents or information will pertain only to the individual approved. Sensitive Documents or information received from the Commission must be handled consistent with the terms of non-disclosure required for application. Contractor is responsible to restrict use of Sensitive Documents or information to project participants only and shall take appropriate measures to prevent distribution of sensitive documents to anyone inside or outside of the Contractor's company except Contractor's project participants. After completion of project, all Sensitive Documents or information remaining in the Contractor's possession shall continue to be governed under the terms of non-disclosure and must continue to be stored in a secure manner. After such records are no longer needed for record purposes, the records shall be destroyed or returned to the Commission.
- 40.5 All Contractor and subcontractor employees that will Work on the job site or who have access to Sensitive Documents or information are to have initial background checks performed by the Commission to assure the Commission information used and generated by this project will not end up in unauthorized hands. The initial background checks are valid for one year and subject to annual renewal for employees continuing to Work on the project. The Office of the Chief Procurement Officer will provide further instructions for submission procedures upon inquiry.

### ARTICLE 41 CONTRACTOR PERFORMANCE EVALUATION

- 41.1 The purpose of the Contractor Performance Evaluation is to:
- 41.1.1 Identify and document the Contractor's ability to meet all contract compliance requirements.
  - 41.1.2 Communicate contract compliance problems to the Contractor in a timely manner.
  - 41.1.3 Provide corrective action as early as possible during the contract Work, so that the Work may be successfully completed in accordance to all contract requirements.
- 41.2 Contractor Performance Evaluation Schedule
- 41.2.1 Contracts equal to or greater than \$25,000 shall be evaluated, at a minimum, at the conclusion of the Work.
  - 41.2.2 Contracts equal to or greater than \$250,000, or more than ninety (90) days in duration shall be evaluated at a minimum at the contract mid-point (approx. 50%) and at the

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contract completion (approx. 100%) based on the contract duration in calendar days.

- 41.2.3 Contracts equal to or greater than \$1,000,000 or greater than one (1) year in duration shall be evaluated at a minimum before the midpoint (approx. 25%); at the contract mid-point (approx. 50%); after the midpoint but before completion (approx. 75%); and at contract completion (approx. 100%) based on the contract duration in calendar days.

### 41.3 Contract Startup

- 41.3.1 Prior to the start of the Contract, the Engineer shall review the Evaluation Factors with the Contractor.
- 41.3.2 Documentation of the meeting shall be provided to the Contractor and to the Procurement Office, and shall be incorporated into the contract file.

### 41.4 Contractor Performance Evaluation

- 41.4.1 The Engineer shall complete a Contractor Performance Evaluation in accordance to the Contractor Performance Evaluation Schedule using the Contractor Performance Evaluation (CPE) form.
- 41.4.2 The Engineer shall attach documentation that supports the results of the Contractor Performance Evaluation and which at a minimum includes:
  - 41.4.2.1 Prior CPE documents
  - 41.4.2.2 The most recent SLMBE subcontracting report
  - 41.4.2.3 Cure Letters and/or Show Cause Letters
  - 41.4.2.4 Field Orders
  - 41.4.2.5 Test Results and/or Inspection Results
  - 41.4.2.6 Correspondence between WSSC and the Contractor
  - 41.4.2.7 Minutes of any meetings relevant to contract compliance.
- 41.4.3 The Engineer shall provide a copy of the CPE form and supporting documents to the Contractor for review and acknowledgement.
- 41.4.4 The Contractor shall review the CPE form, indicate agreement or disagreement with

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the evaluation results, and acknowledge receipt of the CPE form by signing and returning the signed form to the Engineer no later than ten (10) days after receipt.

### **41.5 Contractor Performance Evaluation Meeting**

41.5.1 Contractor Performance Evaluation Meetings shall be conducted if:

41.5.1.1 The Contractor receives a Marginal or Unsatisfactory evaluation;

41.5.1.2 The Contractor requests a meeting within ten (10) days after receipt of the CPE form; or

41.5.1.3 The Engineer determines that a meeting is required to improve Contractor's performance.

41.5.2 Prior to the meeting the Engineer shall provide a copy of the CPE and all supporting documents to the Contractor for review.

41.5.3 Additional WSSC stakeholders may attend the meeting, including but not limited to SLMBE, Procurement, or other departments impacted by the Contract.

41.5.4 Contractor's key personnel and, if requested by WSSC, company owners or executive officers, shall attend Contractor Performance Evaluation Meetings.

41.5.5 During the meeting, the Engineer:

41.5.5.1 Shall provide a sign-in sheet for all meeting attendants, including the date, time and location of the meeting.

41.5.5.2 Shall review all performance issues with the Contractor including CPE and all supporting documentation.

41.5.5.3 Shall document discussion with meeting notes that include corrective action, person(s) responsible for completing corrective action, and date by which corrective action will be completed.

41.5.6 After the meeting

41.5.6.1 The Engineer shall revise the CPE form with any additional information and/or updates to the evaluation results.

41.5.6.2 The Contractor shall review and acknowledge receipt of the CPE form by signing and returning to the Engineer no later than ten (10) days after

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receipt of the form.

- 41.6 CPE forms that document Contractor Performance Evaluations will be stored by the Procurement Office for a period of not less five (5) years.