

PART II
WASHINGTON SUBURBAN SANITARY COMMISSION
PROCUREMENT OFFICE
GENERAL CONDITIONS
ARCHITECTURAL & ENGINEERING SERVICES

**GENERAL CONDITIONS –
ARCHITECTURAL & ENGINEERING SERVICES**

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ARTICLE 1. CONTRACT DOCUMENTS

- 1.1. The Contract Documents include WSSC's Procurement Regulations, the Solicitation, Bonds, Notice of Award, Notice to Proceed, Change Orders, Drawings, Certificate of Substantial Completion, 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 forms completed by the CONSULTANT, and Federal Contract Provisions when required.
- 1.2. The intent of the Contract Documents is that the CONSULTANT 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.
- 1.3. 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
Amendments
Addenda
Special Conditions
General Conditions
Contract Execution Page
Notice to Proceed
Notice of Award
Specifications/Statement of Work
Drawings
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 CONSULTANT)

ARTICLE 2. ACCESS TO INFORMATION, PERSONNEL, COMMISSION FACILITIES

- 2.1. The COMMISSION shall furnish to the CONSULTANT all information and personnel that the CONSULTANT shall deem pertinent in the execution of the Work under this Contract.
- 2.2. The COMMISSION shall assist and make provisions for the CONSULTANT to enter upon COMMISSION facilities as required for the CONSULTANT to perform work under this Contract.
- 2.3. The COMMISSION shall furnish to the CONSULTANT existing COMMISSION maps, drawings, records of construction, operation and maintenance, standard forms, drawings, one copy of each of General Information regarding Rights-of-Way Permits and Field Survey, Standard Details, General Specifications, Amendments to the General Specifications, and certain standard specifications to be incorporated in the Contract Documents; and other information now available to the COMMISSION and necessary to the prosecution of the Work by the CONSULTANT.
- 2.4. The COMMISSION shall assist and make provisions for the CONSULTANT to enter upon public and private lands as required for the CONSULTANT to perform their work under this Contract providing the CONSULTANT has exhausted all reasonable efforts to obtain this permission from the property owners involved.

ARTICLE 3. WORKING HOURS

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- 3.1. The CONSULTANT will only be permitted access to the COMMISSION's facilities only during the working hours indicated in the scope of work.
- 3.2. If it becomes necessary for the CONSULTANT to perform work during COMMISSION non-working hours, permission to work must be granted by the Project/Contract Manager. The CONSULTANT will be required to furnish to the Project/Contract Manager a list of the CONSULTANT's employees who will be working. No additional compensation shall be paid for hours worked during non-working hours.

ARTICLE 4. HOLIDAYS

- 4.1. Access to COMMISSION facilities may be denied on holidays. It is the responsibility of the CONSULTANT to determine on which specific dates these holidays are observed by the COMMISSION.
- 4.2. The COMMISSION observes the following holidays: Christmas Day, New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, General Election Day (even numbered years) and Inauguration Day.

ARTICLE 5. TIME EXTENSION

- 5.1. All time extensions approved by the COMMISSION will be issued in writing as a formal change to the Contract and as described in "Changes" herein. Failure to perform all work in accordance with the schedule, except where approved extensions exist, will be taken into consideration when evaluating the CONSULTANT for future work with the COMMISSION.

ARTICLE 6. COMPENSATION

- 6.1. For services performed by the CONSULTANT under this Contract, and as full and complete compensation therefore, except as otherwise expressly provided herein, the COMMISSION will pay to the CONSULTANT allowable costs and fees as follows:
 - 6.1.1. Direct labor cost shall mean actual salaries and wages paid officers and employees, as limited by the "Labor Classification with Salary Schedule", for time directly chargeable to the project and does not include any costs incurred by the CONSULTANT while participating in the negotiation of this Contract, sub-agreements or change orders applicable to **the change order process**, nor shall it include the costs of fringe benefits paid by the CONSULTANT (such as social security contributions, unemployment, excise and payroll taxes, workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay, etc.). A list of the CONSULTANT'S employee classifications with hourly salary range is provided by the CONSULTANT in the "Labor Classification with Salary Schedule" and shall remain in effect for the life of this Contract. The CONSULTANT agrees that the salary rates as defined and presented in the "Labor Classification with Salary Schedule" are the same as or less than the rates charged other clients for similar work. An estimate of total man hours of each labor category, average hourly rates and estimated direct labor costs for the project appear in the "Total Price Summary".

Overtime Direct Labor charges will be allowed, subject to the prior approval of the COMMISSION'S Project Manager. The maximum overtime rate is (1.5) times Direct Labor for time spent in excess of forty (40) hours in a given week for each individual employee, provided that such overtime charges are specifically identified pursuant to ARTICLE 6.1.5.1. herein.

- 6.1.2. Indirect costs (overhead shall include indirect salaries and wages plus general and administrative expenses, and shall be expressed using direct labor costs as a base). The rates for

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indirect costs shall be fixed at the rates specified in the “Total Price Summary” for the term of the Contract and any extension thereof. Allowable costs for grant eligible Work performed under this Contract shall be determined by the COMMISSION in accordance with applicable U. S. Environmental Protection Agency and EPA and Federal Acquisition Regulations, and the terms of this Contract. An estimate of total indirect costs for this project appears in the “Total Price Summary”.

- 6.1.2.1. Facilities capital cost of money and any state income taxes are not allowable costs for reimbursement purposes under this Contract.
- 6.1.2.2. The CONSULTANT certifies that the cost and pricing data submitted to the COMMISSION for the purpose of establishing equitable costs and fees under this Contract are complete, current and accurate as of the date of such submittal. If this cost and pricing data is determined by the COMMISSION at some future date not to have been complete, current and accurate as of the date above, the Contract price may be subject to downward adjustment and/or recoupment accordingly, as determined by the COMMISSION.
- 6.1.2.3. The CONSULTANT shall provide a copy of a certified Auditor’s Report on its overhead rate developed in accordance with the Federal Acquisition Regulation (Title 48 Code of Federal Regulation, Part 31) including any applicable Cost Accounting Standards (Title 48 CFR, Chapter 99). This shall include an audit performed by any Federal, State or local audit agency and any Acceptance letters from the Department of Transportation from Maryland, Virginia, Delaware, Pennsylvania, or the District of Columbia.

If the CONSULTANT (or any sub-consultant) cannot provide an Auditor’s report, then the following maximum multiplier shall apply to this Contract:

$$\text{Multiplier: Direct Labor Cost [1.0] + Total Indirect Cost (OH) [1.0] + Profit [0.2] = 2.2}$$

- 6.1.3. Other direct costs (reimbursable expenses) and sub-consultant payments shall be only those items specifically defined as reimbursable non-payroll expenses shall be limited to the following:
 - 6.1.3.1. Travel expenses of the CONSULTANT'S officers and employees when away from the home office on activities connected with the Work, including subsistence not to exceed \$175 per diem and mileage at the COMMISSION'S current prevailing rate per mile when either CONSULTANT or employee automobiles are used. Travel other than between the CONSULTANT'S offices and the job site requires prior COMMISSION approval. For travel and subsistence expenses incurred by the CONSULTANT which involve multiple clients or contracts, only the percentage of the expenses that pertain to this Contract shall be reimbursed by the COMMISSION.
 - 6.1.3.2. Identifiable communication expenses, such as long-distance telephone, courier, and delivery charges.
 - 6.1.3.3. Identifiable drafting supplies directly chargeable to the Work.
 - 6.1.3.4. Identifiable reproduction costs applicable to the Work.
 - 6.1.3.5. Services directly applicable to the Work, such as laboratory charges and similar costs that are not applicable to overhead.

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- 6.1.3.6. Reimbursement for expenses not included herein shall be initiated only after prior approval of the COMMISSION. The CONSULTANT certifies that expenses to be reimbursed in accordance with the above are not included in any overhead figure being applied in this Contract. The CONSULTANT further certifies that any direct costs do not include any unallowable costs or profit. The CONSULTANT shall also certify that expenses billed to the COMMISSION are solely for items pertaining to this Contract. An estimate of total other direct costs for this project appears in the “Total Price Summary”.
- 6.1.4. Profit (fee) shall be defined as the difference between the total estimated cost and the price for this project. It is estimated (or fixed) as shown in the “Total Price Summary”, except in a lump sum contract, where profit is included in the total price.
- 6.1.5. Total Price shall mean the sum of the total direct salaries and wages, the total indirect costs (overhead), the total other direct costs (reimbursable expenses), and the total fee (profit) as shown in the “Total Price Summary” and as defined previously in this Article. The total price shall be limited in the following manner:
- 6.1.5.1. For cost-type contracts, the total price as shown in the “Total Price Summary” shall not be exceeded without a formal change order being issued to this Contract. Any costs incurred by the CONSULTANT in excess of the total price shown in the “Total Price Summary” without a formal change order to this Contract will not be paid by the COMMISSION.
- 6.1.5.2. For cost contracts with fixed fee, there can be no increase in the fee without a formal change order to this Contract which increases the scope of work.
- 6.1.5.3. For lump sum contracts, the total price as shown in the “Total Price Summary” shall not be exceeded except in those instances when there has been a mutually agreed upon change in the scope of work.
- 6.2. The CONSULTANT will submit periodic invoices for payment, but not more frequently than monthly, for Work and services performed under this Contract. Such invoices shall be prepared by the CONSULTANT supplemented and accompanied by supporting data which is satisfactory to the COMMISSION. A list of employees employed by the CONSULTANT to perform the direct services and their respective salary rates shall be certified and submitted to the COMMISSION with the first invoice for payment.
- 6.2.1. For cost-type contracts, direct salaries and wages will be supported by names, grades, hours worked, pay rates, and payments to persons involved. (Overtime will be separately identified.)
- 6.2.2. In cases of fixed fee, billing of fee shall be on the basis of percentage of Work completed since the previous month's estimate.
- 6.2.3. Other direct costs (reimbursable expenses) shall be itemized as to type and supported with receipts, vouchers and other supporting data as appropriate.
- 6.2.4. For lump sum contracts, payments will be based on an agreed-upon percentage complete, less any previous payments.
- 6.3. The CONSULTANT shall submit monthly progress reports to the COMMISSION'S project manager. Said reports shall describe the CONSULTANT'S Work accomplished during the month covered by the report and shall present the overall status of the CONSULTANT'S Work through said month. In no case will the COMMISSION make a payment to the CONSULTANT until the progress report for that month is approved by the COMMISSION.

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- 6.4. The CONSULTANT shall vest in the COMMISSION title to all drawings, specifications, Contract Documents, calculations, and all other data or work items produced by the CONSULTANT under this Contract, and this material shall be made available to the COMMISSION immediately upon request. The COMMISSION retains the right to acquire originals, reproducible, and/or prints and copies of this material to suit its needs and purposes and to distribute this material to any agencies, firms and/or individuals. Subject to “Dissemination of Information,” herein, under no circumstances shall any material produced as a result of this Contract be released by the CONSULTANT to other than COMMISSION personnel without prior knowledge and approval by the COMMISSION'S project manager.
- 6.5. Compensation for the services provided by the CONSULTANT shall be based on a cost reimbursement method of payment with a Contract cost that cannot be exceeded without a formal change order being issued to this Contract. Specifically, compensation shall be based on a total multiplier times Direct Labor Costs, plus Other Direct Costs to be invoiced at cost, subject to COMMISSION approval. The multiplier(s) specific to this Contract can be found on the “Consultant and Sub-Consultant Multiplier Schedule”.

ARTICLE 7. CHANGES

- 7.1. The COMMISSION may, at any time, by written order, make changes within the general scope of this Contract in the services or Work to be performed. If such changes cause an increase or decrease in the CONSULTANT'S cost of, or time required for, performance of any services under this Contract, whether or not changed by any written order, the CONSULTANT may submit a claim in accordance with Procurement Regulations §6-104.01.
- 7.2. No services for which additional compensation will be charged by the CONSULTANT shall be accepted without the written authorization of the COMMISSION.

ARTICLE 8. PROPERTY DAMAGE

- 8.1. Should any damage to COMMISSION property be caused by the CONSULTANT, employees or agents of the CONSULTANT, the CONSULTANT will be required to report them to the COMMISSION's Project Manager and make repairs immediately, to the satisfaction of the COMMISSION's Project Manager and at no cost to the COMMISSION. The COMMISSION may, however, elect to make repairs or replace the damaged property and deduct the cost of repairs or replacement from monies due, or to become due, the CONSULTANT.

ARTICLE 9. PROJECT MANAGEMENT

- 9.1. The COMMISSION and the CONSULTANT shall each designate a project manager within fourteen (14) days from date of this Contract to represent each party respectively and be responsible as the individual in charge of administering and carrying out provisions of this Contract. Once so designated by the CONSULTANT this project manager shall not be changed unless specifically allowed or requested by the COMMISSION.
- 9.2. The CONSULTANT shall advise the COMMISSION of the project manager's qualifications and the COMMISSION shall have the right of approval or rejection of the CONSULTANT's designated project manager. The right of approval shall also include key lead discipline engineers as identified in the “Labor Classification with Salary Schedule.”

ARTICLE 10. FAILURE TO PERFORM

- 10.1. Failure of the CONSULTANT to (a) deliver or perform the required goods or services within the time specified or within a reasonable time as interpreted by the Chief Procurement Officer or (b) to make replacements of rejected articles immediately or as directed by the Chief Procurement Officer shall constitute authority for the Chief Procurement Officer purchase in the open market

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goods or services of comparable grade to replace the goods or services not delivered or rejected. On all such purchases, the CONSULTANT shall reimburse the COMMISSION within a reasonable time as specified by the Chief Procurement Officer for any expense incurred in excess of Contract prices, including any administrative costs.

- 10.2. Should public necessity demand it, the COMMISSION reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Chief Procurement Officer. The CONSULTANT shall not be liable for any excess costs if acceptable evidence has been submitted to the Chief Procurement Officer that failure to perform this Contract was due to causes beyond the control and without the failure or negligence of the CONSULTANT.
- 10.3. The remedies provided in this General Condition are in addition to any other rights and remedies provided by law or under any other provisions of this Contract.

ARTICLE 11. TERMINATION

- 11.1. In accordance with WSSC Procurement Regulation § 6-105, the COMMISSION may, by written notice to the CONSULTANT, terminate this Contract in whole or in part at any time, either for the COMMISSION's convenience or default because of the failure of the CONSULTANT to perform services timely, failure to meet standards required, or fulfill the CONSULTANT's obligation under this Contract. Upon receipt of such notice, the CONSULTANT shall:
 - 11.1.1. Immediately discontinue all services affected upon receipt of termination notice, and
 - 11.1.2. Deliver to the COMMISSION any work product, including but not limited to all designs, surveys, data, drawings, specifications, reports, computations, estimates, summaries, computer programs, and such other information and materials as may have been provided by the COMMISSION or accumulated by the CONSULTANT in performing this Contract, whether completed or in progress.

ARTICLE 12. RIGHT TO AUDIT

- 12.1. In accordance with Procurement Regulation §4-602, the CONSULTANT agrees to maintain books, accounts, records, documents and other evidence directly pertinent to the performance of this Contract in accordance with generally accepted accounting principles and practices consistently applied. (The foregoing constitutes "records" for purposes of this Contract)
- 12.2. In accordance with Procurement Regulation §4-603, the CONSULTANT'S facilities and plants, or such part thereof as may be engaged in the performance of this Contract, and records shall be subject at all reasonable times to audit, examination, inspection or reproduction by the COMMISSION, the State of Maryland, or any of their authorized representatives.
- 12.3. The CONSULTANT shall preserve and make available its records until the expiration of five (5) years after the Contract expiration date or after the acceptance of Work, whichever is last, or by other provisions of this Contract, or by (1) or (2) as follows:
 - 12.3.1. If the Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any resulting final settlement.
 - 12.3.2. Records which relate to appeals or disputes, litigation, or settlement of claims arising out of the performance of this Contract shall be retained until final disposition of such appeals, litigation, or claims.

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12.4. The CONSULTANT shall insert the substance of this section in each subcontract issued as a result of this Contract.

ARTICLE 13. SUSPENSION OF SERVICES

13.1. The COMMISSION may at any time, suspend, delay, interrupt, or stop the performance of any or all of the services by written notice to the CONSULTANT. At the Commission's discretion, in the event of such suspension of services, all allowable costs which are deemed by the parties hereto as reasonable and necessarily incurred by the CONSULTANT in suspending the services shall be paid by the COMMISSION, including all costs incurred during the period of suspension and additional costs incurred in reactivating the services. Such payment shall not duplicate costs included under any prior progress payments. The CONSULTANT must itemize the costs involved, provide satisfactory documentation as required by the COMMISSION, and must demonstrate that such services as were provided during the suspension were in direct support of overall services to be performed. Both parties also recognize that the COMMISSION may impliedly suspend the services by delays in its review, comment and action on the submitted data, plans, reports, and other documents transmitted to the COMMISSION and for which there shall be no additional compensation.

13.2. The COMMISSION's right to suspend this Contract is in addition to and not in substitution for the COMMISSION's right to terminate as stated herein.

ARTICLE 14. INTERPRETATION

14.1. In the interest of brevity, this Contract frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The term "days" as used in this Contract shall mean calendar days as defined by Procurement Regulations § 1-201.21. The headings contained in this Contract are inserted only for ease of reference and are not meant to and shall not define, limit, or in any way affect the terms and provisions set forth therein. Each of the parties acknowledges that this is a fair Contract and is not the result of fraud, duress or undue influence exercised upon it by any person or entity. Each party acknowledges that it has read this Contract, has participated in its negotiation, understands its contents, and has had the opportunity to obtain the assistance of legal counsel of its choice. .

ARTICLE 15. ASSIGNMENT

15.1. This Agreement is binding on the heirs, successors, and assigns of the parties hereto. In accordance with WSSC Procurement Regulation §4-108.01 this Agreement is not assignable without the written consent of the Chief Procurement Officer.

ARTICLE 16. SEVERABILITY

16.1. If any term or provision of this Contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of this Contract or the application of this Contract to persons or circumstances other than those against whom or which such term or provision is invalid or unenforceable, shall not be affected thereby; and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by applicable laws.

ARTICLE 17. NO THIRD PARTY RIGHTS

17.1. Nothing in this Contract shall be deemed to create a joint venture or partnership between the COMMISSION and the CONSULTANT; nor shall anything contained in this be deemed to give any third party any claim or right of action against the COMMISSION or the CONSULTANT; nor shall anything contained in this Contract be deemed to cause the CONSULTANT to become the agent of

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the COMMISSION or to otherwise alter the CONSULTANT'S independent CONSULTANT relationship with the COMMISSION.

ARTICLE 18. FORCE MAJEURE

18.1. Neither party shall be considered in default in the performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered or prevented by any cause which is beyond the reasonable control of such party (hereinafter called "Force Majeure"). Force Majeure includes but is not limited to any of the following if reasonably beyond the control of the party claiming Force Majeure: war (declared or undeclared), blockages, hostilities, revolutions, riots, strikes, lockouts or other labor disturbances, epidemics, fires, storms, delays or interruptions in transportation, or any laws, regulations or ordinances of any government, governmental agency or court having or claiming to have jurisdiction over any part of the services, including laws, regulations or ordinance pertaining to the protection of the environment, or obtaining permits required by any such government, governmental agency or court, or any other cause (whether or not of kinds specifically mentioned herein) that is not reasonably within the control of the party claiming Force Majeure. In accordance with Procurement Regulations § 6-104.01, the CONSULTANT shall file with designated Project Manager any claims that arise from a Force Majeure event. The Project Manager shall serve as the Engineer for claims that arise under Procurement Regulation § 6-104.01.

ARTICLE 19. BRIBES

19.1. A bribe or attempt to bribe any employee or officer of the COMMISSION by the CONSULTANT shall be considered a fraudulent and bad faith act, and shall thus empower the COMMISSION to invoke its rights and the Contract may be declared null and void pursuant to WSSC Procurement Regulation § 6.103.02.

ARTICLE 20. COVENANT AGAINST CONTINGENCY FEES

20.1. The undersigned person authorized to execute this proposal on behalf of the firm or corporation offering services hereunder, warrants that he or she or any member of the contracting firms has not employed or retained any representative, individual or firm, other than a bona fide employee working solely for the contracting professional or firm to solicit or secure any contracts hereunder and furthermore warrants that there has not been any payment or promise or agreement to pay anyone a fee, COMMISSION, percentage, gift, or any other consideration contingent upon or resulting from the award of this Contract under this proposal.

20.2. For the breach or violation of this provision, the COMMISSION shall have the right to terminate any Contract resulting from this proposal without liability and, at its discretion, deduct from the Contract price or otherwise recover the full amount or the value of such fee, COMMISSION, percentage, gift, or consideration. This right of recovery by the COMMISSION shall not be a bar to any charges or violations of any federal, state or local law brought before a court of competent jurisdiction by any party, including the COMMISSION.

ARTICLE 21. SUBCONTRACTING

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

21.1.1. Before entering into any subcontracts, the CONSULTANT shall submit a written statement to the Project Manager giving name and address of the proposed sub-consultant, manufacturer or supplier, the Work and material that he is to perform and furnish, and shall further certify that the proposed sub-consultant, manufacturer or supplier has the necessary facilities, skill, integrity, past experience and financial

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resources to perform the portion of the Work stated in accordance with requirements of the Contract.

- 21.1.2. No substitution for any sub-consultant, manufacturer or supplier, person or entity previously selected by the CONSULTANT shall be made without written notification to the Project Manager.
- 21.2. The CONSULTANT shall not award work to sub-consultants in excess of 49 percent of the Contract value.
- 21.3. The CONSULTANT shall report the use of sub-consultants, manufacturers, and suppliers during the course of the Contract as set forth in the Contract Documents.
- 21.4. The CONSULTANT shall be fully responsible to the COMMISSION for the acts and omissions of the CONSULTANT'S sub-consultants, 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.
- 21.5. The CONSULTANT shall be fully responsible for the coordination of the work of the trades, sub-consultants, manufacturers and suppliers, and their officers, agents, and employees.
- 21.6. The CONSULTANT shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bond sub-consultants to the CONSULTANT by the terms of the Contract Documents insofar as applicable to the Work of sub-consultants and to give the CONSULTANT the same power as regards terminating any subcontract that the COMMISSION may exercise over the CONSULTANT under any provision of the Contract Documents.
- 21.7. Nothing contained in the Contract Documents shall create any contractual arrangement between any sub-consultant and the COMMISSION.
- 21.8. The Commission will require all CONSULTANTS to report sub-consultant/supplier payments on a monthly basis utilizing the WSSC's Web-Based Compliance System. The CONSULTANT shall enter all payment information within 30 days of receipt of payment from WSSC until final payment, and the sub-consultant (s)/supplier(s) shall validate payment received within 30 days of receipt of payment from the CONSULTANT until final payment. Instructions on entering data are located on WSSC's website at: <http://www.wsscwater.com/home/jsp/content/slmbe-program.faces>
- 21.9. 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 sub-consultant payment(s) are reported and verified.
- 21.10. Failure to comply with the requirements herein will be considered in the evaluation of the CONSULTANT'S responsibility in performing future contracts.
- 21.11. No additional compensation will be allowed for meeting the requirements of this section.

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.

ARTICLE 22. INDEMNIFICATION AGREEMENTS

- 22.1. **GENERAL LIABILITY:** The CONSULTANT shall defend, indemnify and save harmless the COMMISSION from any and all suits, claims, actions, damages or costs of every name and description, including reasonable attorney's fees to which the COMMISSION may be subject, including but not limited to any suit, claim, or action alleging injury to persons (bodily injury,

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including death, or any personal injury) or property damage as a result of the Work, caused or alleged to be caused by the negligence or willful acts of misconduct on the part of the CONSULTANT, their servants or agents, (other than arising out of CONSULTANT'S professional services). Monies to become due the CONSULTANT 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 until the CONSULTANT furnishes to the COMMISSION satisfactory evidence of insurance coverage with respect to such suits or claims or post a bond in the amount of the dispute in a form satisfactory to the COMMISSION.

22.2. **PROFESSIONAL LIABILITY:** The CONSULTANT shall defend, indemnify and save harmless the COMMISSION from any and all suits, claims, actions, damages or costs of every name and description, including reasonable attorneys' fees to which the COMMISSION may be subject, including but not limited to any suit, claim or action alleging injury to persons (bodily injury, including death, or any personal injury) or property damage as a result of CONSULTANT'S professional services, caused or alleged to be caused by the negligence or willful acts of misconduct on the part of the CONSULTANT, their servants or agents. The COMMISSION shall retain monies owed the CONSULTANT until such suits or claims for damages shall have been settled or until the CONSULTANT furnishes to the COMMISSION satisfactory evidence of insurance coverage with respect to such suits or claims or post a bond in the amount of the dispute in a form satisfactory to the COMMISSION.

22.3. Monies due or to become due the CONSULTANT 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 23. OWNERSHIP RIGHTS

23.1. The CONSULTANT shall vest in the COMMISSION title to all reports, exhibits, calculations, computer programs, program modifications, parameters, coding or any other products of Work produced or delivered to the COMMISSION hereunder in the performance of this Contract and this material shall be made available to the COMMISSION immediately upon request. The COMMISSION retains the right to acquire originals, reproductions, and/or prints and copies of this material to suit its needs and purposes and to distribute this material to any agencies, firms and/or individuals.

23.2. All reports shall be the sole property of the COMMISSION.

ARTICLE 24. INTELLECTUAL PROPERTY COPYRIGHT

24.1. The CONSULTANT and its employees hereby irrevocably transfer, assign, and convey to the COMMISSION all rights, titles and interests, including the sole exclusive and complete copyright interest in any and all copyrightable works created pursuant to this Contract. The CONSULTANT and its employees further agree to execute such documents as the COMMISSION may request to affect such transfer or assignment.

24.2. Further, the CONSULTANT and CONSULTANT'S employees agree that the rights granted to the COMMISSION by this Article are irrevocable. No termination of this Contract shall have the effect of rescinding, terminating, or otherwise invalidating the rights acquired pursuant to the provisions of this "Intellectual Property Copyright" Article.

24.3. The use of sub-consultants or third parties in developing or creating input into any copyrightable materials produced as part of this Contract is prohibited unless such sub-consultants or third parties agree to include the provisions of this Article as part of any contract they enter into with the CONSULTANT for Work or related to Work pursuant to this Contract.

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ARTICLE 25. DISSEMINATION OF INFORMATION

25.1. The CONSULTANT shall:

- 25.1.1. Not release any information related to the services or performance of the services under the Contract, nor publish any reports or documents related to the Contract without the prior written consent of the Contract Administrator; and
- 25.1.2. Indemnify and hold harmless the COMMISSION, its officers, agents, and employees, from any and all liability which may be incurred by reason of dissemination, publication, distribution, or circulation, in any manner whatsoever, of any information, data, documents, or materials pertaining in any way to this Contract by the CONSULTANT, their agents or employees.
- 25.1.3. Hold all materials and information belonging to the COMMISSION or the COMMISSION's agents in strictest confidence and not to make use thereof other than for the performance of contractual obligations, to release it to or disclose it to any other party. Any information of a restricted nature provided to the CONSULTANT by the Project Manager or designee in the course of Contract implementation shall be handled in accordance with restrictions placed thereon by the Project Manager. Information or documents given to, or generated by, the CONSULTANT in the course of Contract implementation shall be considered restricted information and subject to handling and dissemination restrictions as specified herein and/or as specified by the Project Manager.

ARTICLE 26. PATENTED DEVICES, MATERIALS AND PROCESSES

- 26.1. If the CONSULTANT is required or desires to use any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner and a copy of such agreement shall be filed with the COMMISSION. The CONSULTANT 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.

ARTICLE 27. CONTRACT DISPUTE RESOLUTION

- 27.1. All claims by a CONSULTANT against WSSC which includes without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission shall be resolved in accordance with Procurement Regulations §6-104.01.
- 27.2. The CONSULTANT 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.
- 27.3. No claim by the CONSULTANT shall be allowed if asserted after final payment under this Contract.

ARTICLE 28. CONFLICT OF INTEREST

- 28.1. The CONSULTANT shall be required to submit a statement in writing to the Project Manager should a conflict of interest arise during the term of this Contract.

ARTICLE 29. DELAY OF WORK

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- 29.1. If the performance of all or any part of the Work of this Contract is delayed or interrupted (a) by an act of the Chief Procurement Officer in the administration of this Contract that is not explicitly or implicitly authorized by this Contract, or (b) by a failure of the Chief Procurement Officer to act within the time specified in this Contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by the delay or interruption and the Contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual provision affected by the delay or interruption.
- 29.2. However, no adjustment shall be made under this General Condition for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the CONSULTANT, or for which an adjustment is provided or excluded under any other provision of this Contract.
- 29.3. A delay claim shall be filed according to WSSC Procurement Regulations § 6.104.01.

ARTICLE 30. WARRANTY FOR PROFESSIONAL SERVICES

- 30.1. The CONSULTANT acknowledges that he is aware that the professional services provided herein are furnished to the COMMISSION with the understanding that the COMMISSION, in accepting these services, relies upon the CONSULTANT's particular skill and expertise. Accordingly, the CONSULTANT warrants that the professional services provided are of a professional quality and that such services meet or exceed the prevailing practices and standards of the trade from which the services are provided.
- 30.2. Both parties also recognize that the COMMISSION may implicitly suspend the Work by reasonable delays in its review, comment and action on the submitted data, plans, reports and other documents transmitted to the COMMISSION, for which there shall be no additional compensation.

ARTICLE 31. MARYLAND LAW

- 31.1. The CONSULTANT agrees to obtain and maintain in good standing all corporate filings, licenses, and approvals, as required by Maryland law
- 31.2. This Contract shall be construed and enforced in accordance with, and governed by, the laws of the State of Maryland, regardless of where the Contract is executed. All disputes between the parties not resolved by the procedures set forth herein shall be resolved by litigation in the federal or state courts of Montgomery County or Prince George's County, Maryland, which shall be the exclusive venue for litigation.

ARTICLE 32. PUNITIVE DAMAGES

- 32.1. In any action by the CONSULTANT against the COMMISSION or its agents, there shall be no liability for punitive damages.

ARTICLE 33. ABUSE, USE, SALE OR POSSESSION OF DRUGS OR INTOXICANTS

- 33.1. The use, possession, sale or distribution of drugs or intoxicants by the CONSULTANT, sub-consultant, 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 CONSULTANT to prevent such activities and to remove any employee or sub-consultant employee whose ability to perform appears to be affected by the use of drugs or intoxicants. Failure of the CONSULTANT to comply with this provision may result in termination of the Contract.

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ARTICLE 34. SMOKING

- 34.1. It shall be the responsibility of the CONSULTANT to observe the conditions of the COMMISSION's Smoking Policy within COMMISSION-operated facilities and within COMMISSION-owned motor vehicles. The Project Manager will indicate to the CONSULTANT the restricted areas. Failure to comply with the provisions of the policy may result in removal of the CONSULTANT's employees or termination of the Contract.

ARTICLE 35. LEGAL ADDRESS

- 35.1. The address given in the Proposal shall be the legal address of the CONSULTANT. Changes to the CONSULTANT's legal address may be changed at any time by notice in writing delivered to the Chief Procurement Officer. The mailing of any notice to this legal address, postage pre-paid to the CONSULTANT, shall be deemed to be a legal and sufficient service upon the CONSULTANT.

ARTICLE 36. SECURITY

- 36.1. The Consultant's employees shall be issued photo identification cards. Identification cards must be worn at all times while on any COMMISSION property. CONSULTANT employees found on-site without proper identification will be immediately removed from COMMISSION property. Identification cards for employees who are no longer associated with the project, for any reason, will be immediately recovered by the Consultant and returned to the Project/Contract Manager. The CONSULTANT is responsible to control and inventory all identification cards issued so that cards are not obtained or used by unauthorized individuals. All cards must be returned to the Project/Contract Manager at the conclusion of this Contract.
- 36.2. All project participants needing either electronic or hardcopy documents dealing with critical facilities or sensitive information will be required to make application with, and receive approval from the COMMISSION prior to receiving this information. Permission to receive said documents (herein referred to as "sensitive") will pertain only to the individual approved. Sensitive documents received from the COMMISSION must be handled consistent with the terms of non-disclosure required for application. CONSULTANT is responsible to restrict use of sensitive documents to project participants only and shall take appropriate measures to prevent distribution of sensitive documents to anyone inside or outside of the CONSULTANT's company except CONSULTANT's project participants. After completion of project, all sensitive documents remaining in the CONSULTANT's possession shall continue to be governed under the terms of non-disclosure and must continue to be stored in a secure manner.

ARTICLE 37. AUTHORIZATION

- 37.1. The CONSULTANT warrants, represents, and covenants that the execution and delivery of this Contract has been duly authorized by all requisite corporate or partnership action of the CONSULTANT and that the persons so executing and delivering this Contract on behalf of the CONSULTANT are duly authorized to do so.

ARTICLE 38. CONFIDENTIALITY

- 38.1. The CONSULTANT and its employees agree that all findings, memoranda, correspondence documents or records of any type, whether written, electronic, or oral and all documents generated by the CONSULTANT its sub-consultants as a result of the COMMISSION's request for services under this Contract, are confidential records (Records). Neither the records shall be released, nor their contents disclosed to any party other than the Project Manager, or assignee, and the Contract Administrator or assignee. The CONSULTANT and their employees agree that all oral or written inquiries regarding the status of any Records

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shall be referred to the Project Manager or assignee. The CONSULTANT agrees to include the provisions of this Article as part of any contract or agreement the CONSULTANT enters into with sub-consultants or other third parties for work related to Work pursuant to this Contract. No termination of this Contract shall have the effect of rescinding, terminating, or otherwise invalidating this Article. The covenants set forth in this Article shall survive this Contract and shall remain in effect in perpetuity.

ARTICLE 39. PROVISION TO EXTEND CONTRACT FOR NINETY (90) DAYS

39.1. In accordance with the WSSC Procurement Regulation §4-501.04, WSSC may find it advantageous to obtain the option of a unilateral contract extension to extend the Contract ninety (90) days past its termination date. If WSSC intends to exercise the extension, it shall provide written notice to the CONSULTANT at least thirty (30) days prior to the Contract termination date. The exercise is at WSSC's sole discretion.

ARTICLE 40. PROCUREMENT REGULATIONS

40.1. This Contract shall be construed and enforced in accordance with, and governed by, the Procurement Regulations adopted August 1, 2012.

ARTICLE 41. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

41.1. The acceptance by the CONSULTANT of final payment shall constitute a release to the COMMISSION from any and all claims of any nature and all liability to the CONSULTANT, 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.

ARTICLE 42. ETHICS

42.1. Personnel of the COMMISSION and the CONSULTANT 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 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."

42.2. 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 43. SEXUAL HARASSMENT

43.1. Sexual harassment of COMMISSION employees by the CONSULTANT, a sub-consultant, 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 CONSULTANT to prevent any such acts and to remove any employee who conducts such acts. Failure of the CONSULTANT 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

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interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

ARTICLE 44. DEBARMENT AND SUSPENSION

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

ARTICLE 45. NONDISCRIMINATION POLICY

45.1. Discrimination in any manner against any employee or applicant for employment by the CONSULTANT or a sub-consultant on the basis of sex, race, creed, color, age, mental or physical handicap, sexual orientation, or national origin is prohibited.

45.2. The CONSULTANT shall include a similar nondiscrimination clause in all subcontracts.

45.3. If the CONSULTANT fails to include a nondiscrimination clause in a subcontract, the COMMISSION shall provide a reasonable opportunity to cure the defect. If the CONSULTANT fails to cure the defect within the time period granted, the COMMISSION may declare the Contract void and the CONSULTANT shall be entitled to the reasonable value of Work that has been performed and materials that have been provided to date. If the CONSULTANT cures the defect, the Contract remains in force according to its revised terms.

45.4. If the CONSULTANT willfully fails to comply with the requirements of the nondiscrimination clause, the COMMISSION may compel the CONSULTANT to continue to perform under the Contract as provided in Maryland Annotated Code, Public Utilities, § 20-106(b).

ARTICLE 46. ENTIRE CONTRACT

46.1. This written Contract constitutes the entire Contract between the parties and except for modifications prepared in accordance with provisions herein and the Procurement Regulations adopted August 1, 2012, there are no other collateral contracts or agreements concerned between the parties contracting hereto. Nothing contained in this Contract shall be construed as creating any personal liability on the part of an officer, employee, or agent of the COMMISSION, including the Commissioners individually.

ARTICLE 47. PAYMENT

47.1. Payments to the CONSULTANT pursuant to this Contract shall be made no later than 30 days after Commission's receipt from the CONSULTANT of a proper invoice, which has been approved as correct by the Commission's Project manager with respect to quantity, price, delivery, lawfully deducted sums, and supporting documentation as required by the Contract.

47.2. Receipts, vouchers and other supporting data shall be submitted with the CONSULTANT'S periodic invoices to support reimbursable expenses defined by "Compensation" herein.

47.3. Payment will not be made for any services until properly accounted for as to compliance with the scope of work and acceptance by the COMMISSION in accordance with this Contract. Prompt payment discounts, if any, shall be applicable from the date of acceptance of the services, or the date of receipt of the invoice, whichever is later. Payment will be made upon receipt of a properly executed invoice(s) and in accordance with the provisions of this Contract.

47.4. Invoices shall reference the Purchase Order number, be submitted in duplicate based on the appropriate unit prices named in the Bid and addressed as follows:

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Washington Suburban Sanitary Commission
Finance/Disbursements Group
14501 Sweitzer Lane, 11th Floor
Laurel, Maryland 20707-5902

ARTICLE 48. CONSULTANT PERFORMANCE EVALUATION

48.1. The purpose of the CONSULTANT Performance Evaluation is to:

- 48.1.1. Identify and document the CONSULTANT's ability to meet all Contract compliance requirements.
- 48.1.2. Communicate Contract compliance problems to the CONSULTANT in a timely manner.
- 48.1.3. 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.

48.2. Consultant Performance Evaluation Schedule

- 48.2.1. Contracts equal to or greater than \$25,000 shall be evaluated, at a minimum, at the conclusion of the work.
- 48.2.2. Contracts equal to or greater than \$250,000, or more than 180 days in duration shall be evaluated at a minimum at the Contract mid-point (approx. 50%) and at the Contract completion (approx. 100%) based on the Contract duration in calendar days.
- 48.2.3. 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.

48.3. Contract Startup

- 48.3.1. Prior to the start of the contract, the Contract Manager shall review the Evaluation Factors with the CONSULTANT.
- 48.3.2. Documentation of the meeting shall be provided to the CONSULTANT and to the Procurement Office, and shall be incorporated into the Contract file.

48.4. CONSULTANT Performance Evaluation

- 48.4.1. The Contract Manager shall complete a CONSULTANT Performance Evaluation in accordance to Consultant Performance Evaluation Schedule using the CONSULTANT Performance Evaluation (CPE) form.
- 48.4.2. The Contract Manager shall attach documentation that supports the results of the Consultant Performance Evaluation and which at a minimum includes:
 - 48.4.2.1. Prior CPE documents
 - 48.4.2.2. The most recent SLMBE subcontracting report
 - 48.4.2.3. Cure Letters and/or Show Cause Letters
 - 48.4.2.4. Test Results and/or Inspection Results

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48.4.2.5. Correspondence between WSSC and the CONSULTANT

48.4.2.6. Minutes of any meetings relevant to contract compliance.

48.4.3. The Contract Manager shall provide a copy of the CPE form and supporting documents to the CONSULTANT for review and acknowledgement.

48.4.4. The CONSULTANT shall review the CPE form, indicate agreement or disagreement with the evaluation results, and acknowledge receipt of the CPE form by signing and returning the signed form to the Contract Manager no later than ten (10) days after receipt.

48.5. Consultant Performance Evaluation Meeting

48.5.1. Consultant Performance Evaluation Meetings shall be conducted if:

48.5.1.1. The CONSULTANT receives a Marginal or Unsatisfactory evaluation,

48.5.1.2. The CONSULTANT requests a meeting within ten (10) days after receipt of the CPE form.

48.5.1.3. The Contract Manager determines that a meeting is required to improve CONSULTANT's performance.

48.5.2. Prior to the meeting the Contract Manager shall provide a copy of the CPE and all supporting documents to the CONSULTANT for review.

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

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

48.5.5. During the meeting, the Contract Manager

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

48.5.5.2. Shall review all performance issues with the CONSULTANT including CPE and all supporting documentation.

48.5.5.3. 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.

48.5.6. After the meeting,

48.5.6.1. The Contract Manager shall revise the CPE form with any additional information and/or updates to the evaluation results.

48.5.6.2. The CONSULTANT shall review and acknowledge receipt of the CPE form by signing and returning to the Contract Manager no later than ten (10) days after receipt of the form.

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

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ARTICLE 49. OBJECTIVES

49.1. The CONSULTANT shall furnish all services described herein and agrees to perform, but is not limited to the following:

49.1.1.1. Secure permission to enter upon public and private lands, in accordance with COMMISSION guidelines, as required to perform Work under this Contract. (The CONSULTANT shall use care and discretion while working on public or private property, and shall be responsible for any damages to said property incurred as a result of the CONSULTANT’S operations.)

49.1.1.2. Cause plans, reports and other documents submitted to the COMMISSION under the terms of the Contract to be signed by a principal or principals of the CONSULTANT’S firm registered to engage in the practice of the appropriate branch of engineering in the state of Maryland.

49.1.1.3. Review materials supplied by the COMMISSION and provide such additional information or data as is necessary for the completion of the project.

49.1.1.4. Provide all engineering services described in the Scope of Work.

49.1.1.5. Have the following responsibilities associated with work performed under this contract:

49.1.1.6. The CONSULTANT shall be responsible for the quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and systems performance for all services furnished by the CONSULTANT under this Contract. The CONSULTANT shall, without additional compensation from the COMMISSION, correct or revise any and all errors, omissions, or other deficiencies in the CONSULTANT’S designs, drawings, specifications, reports, and other services.

49.1.1.7. The CONSULTANT acknowledges and agrees that review, approval, payment or acceptance of services required under this Contract in no manner relieves the CONSULTANT of responsibility for the adequacy, fitness, completeness, suitability and correctness of those services.

ARTICLE 50. EPA REGULATIONS - CONSULTING ENGINEER AGREEMENTS

50.1. The parties hereto understand and agree that U. S. Environmental Protection Agency and Federal Procurement Regulations are applicable to any grant eligible Work performed under this Contract. The applicable regulations include, but are not limited to, Title 40 Code of Federal Regulations Part 31 and Title 48 Code of Federal Regulations Part 31.105 or such regulations as are in effect on the date of execution of this Contract. In the event of any conflict between provisions of this Contract and the EPA Regulations, the EPA Regulations shall govern.

ARTICLE 51. LITIGATION

51.1. It is understood and agreed that the compensation herein provided to be paid by the COMMISSION is for the services of the CONSULTANT on the project as described herein and does not include any assistance in preparation for or during the progress of litigation to which the COMMISSION is a party, unless specifically required by the services to be performed by the CONSULTANT in “Compensation” herein. The CONSULTANT agrees to assist the COMMISSION in matters of litigation upon request and upon reasonable compensation to be negotiated for such services requested. The CONSULTANT shall not be entitled to any compensation for any assistance or services requested or rendered in any matter involving claims

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by third parties against the COMMISSION arising out of the fault or negligence on the part of the CONSULTANT or their agents.

ARTICLE 52. DOCUMENT SECURITY AND SITE ACCESS PROCEDURES

52.1. “Sensitive” documents and information are defined as those 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:

52.1.1. Plans/blueprints, as-built drawings, or Contract Documents of COMMISSION facilities

52.1.2. Plans/blueprints, as-built drawings, Contract Documents, or 200-foot sheets of the water distribution system or the wastewater collection system

52.1.3. For any document or information to be provided to the CONSULTANT where there is uncertainty whether it is “sensitive”, the COMMISSION shall have sole discretion to make such determination.

52.2. The CONSULTANT and its sub-consultants shall abide by the following non-disclosure terms:

52.2.1. All records/information in connection with this Contract shall be considered as property of WSSC. The distribution of documents (hardcopy or electronic) is restricted as follows:

52.2.2. For all documents deemed “sensitive”, including documents depicting or related to a COMMISSION “Facility” (defined as a dam; a water treatment plant; water pump station; water storage facility; wastewater treatment plant; wastewater pumping station; Consolidated Office Building; or depot/maintenance shop [the facility includes related piping and appurtenances such as vaults and valves contained within its property lines]), pipelines greater than 12” in diameter, or as otherwise specified by the COMMISSION, the CONSULTANT and its employees may not distribute, without the prior written approval of the COMMISSION, such documents in any manner, in whole or in part, to anyone inside or outside of the CONSULTANT’s Company, except for purposes of performing the services under this Contract. The distribution of such documents by the CONSULTANT shall include the statement that the documents being distributed are of a privileged and confidential nature and that they shall only be used for the purpose for which they are being distributed.

52.2.3. For all other COMMISSION documents, the CONSULTANT’s company may distribute documents only to individuals within or outside the Company needing them for performing legitimate business functions.

52.2.4. In development of new documents, the CONSULTANT will limit the inclusion of sensitive information regarding existing facilities/features to the minimum required to accomplish the objectives of this Contract.

52.2.5. The CONSULTANT is responsible for its employees abiding by all non-disclosure terms of this Contract as well as individual non-disclosure agreements under WSSC’s Engineering Records/Information (WERI) system. The CONSULTANT shall communicate to its employees the non-disclosure requirements. If the CONSULTANT or any of the CONSULTANT’s employees violate the terms of non-disclosure, WSSC, at its discretion following investigation, reserves the right to revoke all access privileges of the CONSULTANT and the CONSULTANT’s employees to COMMISSION records/information indefinitely as well as require the return of COMMISSION records/information in the possession of the CONSULTANT. The CONSULTANT has the right to appeal this revocation in accordance with §6-104 of the Procurement Regulations.

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- 52.2.6. The CONSULTANT shall have at least one individual employee apply and be approved for access to hardcopy or electronic documents through WSSC's Engineering Records/Information (WERI) system. WSSC will only provide documents to employees of the CONSULTANT who have been approved for access.
- 52.2.7. The CONSULTANT shall be responsible to notify WSSC of the separation from employment or reassignment from this project of any employees previously working on this project. In addition, the CONSULTANT shall be responsible to review and authorize periodic renewals of "registered" employees as required by the WERI system.
- 52.2.8. The CONSULTANT shall be responsible for notifying WSSC within 24 hours of any identified breach of the CONSULTANT's or its employee's non-disclosure terms.
- 52.2.9. WSSC reserves the right to audit the CONSULTANT's compliance with these non-disclosure terms.
- 52.3. ALL CONSULTANT and sub-consultants employees involved in the project who have access to sensitive 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.
- 52.4. ALL sensitive documents given to the CONSULTANT shall be stored in secure areas. Access shall be limited to only those individuals who will be working directly on the project and have the clearances listed in C above.
- 52.5. Discussions regarding sensitive information shall not be conducted with persons not involved on the project.
- 52.6. Electronic documents of a sensitive nature shall be located on a local hard drive, a secure local area or wide area networked drive, or a secured project specific web site. File access rights to sensitive electronic documents shall be limited to project team members through secure access portals. All sensitive e-mail correspondence shall also be restricted from unsecured network/outside access. Upon completion of the project the CONSULTANT shall destroy all project records, including both paper and electronic copies, which the CONSULTANT determines are not needed for record purposes. All other records shall be stored in a secure fashion in accordance with the terms of this Contract. These records shall only be distributed to the COMMISSION or to CONSULTANT employees with COMMISSION-approved background checks. After such records are no longer needed for record purposes, the records shall be destroyed or returned to the COMMISSION.
- 52.7. Sensitive information and correspondence shall be hand-delivered rather than sent via e-mail, regular mail, or express mail whenever possible.
- 52.8. Within 4 weeks following the Notice To Proceed, the CONSULTANT shall develop a project internal security plan to be approved by the COMMISSION which will institute the above security requirements (and others as agreed upon by the COMMISSION and the CONSULTANT).
- 52.9. No Work under this Contract involving sensitive documents shall be performed outside of the United States.

ARTICLE 53. COOPERATION AND CONFIDENTIALITY

- 53.1. Duties upon Receipt of a Disclosure Document: This article herein addresses the responsibilities of the CONSULTANT in the event it or the COMMISSION receives or is served with a Disclosure

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Document. The CONSULTANT shall within forty-eight hours of its receipt or service (whichever is sooner) provide to the COMMISSION a full copy of any Disclosure Document. The CONSULTANT agrees not to disclose any information related to the Services or any Confidential Information to any person except as required by law and only after affording the COMMISSION with a full opportunity to pursue its remedies to prevent or condition such disclosure. In the event of any disclosure, the CONSULTANT shall simultaneously provide to the COMMISSION a full copy of such disclosure. In the event the disclosure is verbal, the CONSULTANT agrees to provide a full and complete de-briefing of such disclosure to the COMMISSION or its legal representatives at the earliest opportunity. In the event the COMMISSION receives or is served with a Disclosure Document, CONSULTANT agrees to provide to the COMMISSION within forty-eight hours of a request by the COMMISSION any Confidential Information the COMMISSION requires in connection with the Disclosure Document.

- 53.2. Cooperation: The CONSULTANT shall cooperate with the COMMISSION in responding to any Disclosure Document. The CONSULTANT shall cooperate with the COMMISSION in the event of any investigation or litigation initiated or conducted by any third party (including, without limitation, any governmental or prosecutorial body), which investigation or litigation touches in any way upon the Services, Confidential Information, or the operations of the COMMISSION. Such cooperation includes without limitation the prompt and full compliance with the CONSULTANT'S obligations hereunder, access to Confidential Information, and full disclosure from the CONSULTANT or any Representative asked or required to disclose Confidential Information or information about the Services or the operations of the COMMISSION.
- 53.3. Confidentiality: CONSULTANT agrees to treat confidentially all Confidential Information and any other information pertaining to the Services that COMMISSION or any of the COMMISSION'S agents, employees, or representatives furnishes to CONSULTANT (irrespective of the form of communication), whether furnished before or after the date of this Contract. Further, CONSULTANT agrees to provide access to all Confidential Information in its care, custody, or control at the request of the COMMISSION.
- 53.4. Permitted Disclosures: CONSULTANT agrees not to use any Confidential Information for any purpose other than in connection with CONSULTANT'S performance of the Services. Confidential Information may be disclosed to Representatives who have a bona fide need to know such information. Such Representatives to whom disclosure is made will be informed by CONSULTANT of the confidential nature of such information, will be directed to treat such information confidentially, and will be informed that by receiving Confidential Information they are agreeing to be bound by this article herein. The CONSULTANT shall provide equivalent provisions in its agreements with its sub-CONSULTANTs to flow down the requirements of this article herein. CONSULTANT will be liable to the COMMISSION for any breach of its obligations hereunder by its Representatives. If requested by COMMISSION, CONSULTANT will furnish, in writing, to COMMISSION, a list of Representatives to whom Confidential Information has been or will be disclosed.
- 53.5. Remedies: The parties agree that any party will be irreparably harmed by any breach of this article herein and that monetary damages will not adequately compensate the parties from such a breach. Therefore, the parties agree that this article herein shall be specifically enforceable by any court of competent jurisdiction. The parties agree that the provisions of this article herein are a material inducement to the Contract between the COMMISSION and CONSULTANT. The COMMISSION may seek a protective order or other appropriate remedy in order to prevent or condition disclosure of Confidential Information. If a protective order or other appropriate remedy is not obtained, CONSULTANT will furnish only that portion of the Confidential Information or take only such action as is legally required and will take all actions reasonably necessary to obtain assurance that confidential treatment will be accorded to the information while keeping the COMMISSION fully advised of its actions. In addition, CONSULTANT will not oppose any action by COMMISSION (and will, if and to the extent requested by COMMISSION, reasonably cooperate with, assist, and join with COMMISSION in any such action); to obtain a protective order or other appropriate

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remedy or other reliable assurance that confidential treatment will be accorded to the Confidential Information that is disclosed.

- 53.6. No Waiver of Privileges: Neither the existence of this article herein nor the exchange of Confidential Information shall constitute a waiver of attorney-client, work product doctrine, or any other applicable privilege or protection in any dispute involving the parties. Nothing herein is intended to prevent disclosure, discovery, or admissibility of otherwise discoverable and/or admissible material; rather the parties are setting forth the procedures applicable to such disclosure.
- 53.7. Further Cooperation: The parties agree to cooperate fully and execute any and all supplementary documents and to take any and all additional action that may be necessary or appropriate to obtain full force and effect to the basic terms and intent of this article herein, and which are not inconsistent with the terms set forth herein.
- 53.8. Invalid Provisions: Should any provisions of this article herein be declared invalid or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and the illegal or invalid parts, terms, or provisions shall be deemed not to be a part to this article herein, but only to the extent of the invalidity or illegality thereof.
- 53.9. Controlling Law: Regardless of where the Contract is executed, it shall be construed and interpreted in accordance with the laws of the State of Maryland, exclusive of its choice of law's provisions. In no event, however, will resort be had to any presumption or other rule of law requiring construction against any party who may have drafted or caused the Contract or this article herein to be drafted.
- 53.10. Voluntariness: The parties hereto expressly represent and warrant that they have entered into this article herein freely and voluntarily, with proper authority and without any reservation. Each party acknowledges that it has had adequate time to review, reflect upon, consider, and consult with legal counsel concerning the terms of this article herein, and agree that neither this article herein nor the terms set forth herein is the result of fraud, duress, coercion, or undue influence on the part of any party or their counsel.