

## GENERAL CONDITIONS

### ARTICLE 1 DEFINITIONS

Wherever used in the Contract Documents, 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 of the Contract, which modifies or interprets the Contract Documents.
- 1.2 Approval - Written approval from the Engineer.
- 1.3 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.
- 1.4 Bidder - Any person, firm or corporation submitting a Bid for the Work.
- 1.5 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.
- 1.6 Change Order - A written order to the Contractor signed by the Engineer authorizing an addition, deletion or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Price or Contract Time.
- 1.7 Commission - The Washington Suburban Sanitary Commission (WSSC), the Owner.
- 1.8 Construction Strip - 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.
- 1.9 Contract Documents - The Contract, including Invitation to Bid, Information for Bidders, Bid Form, Contract, Bonds (when required), Notice of Award, Notice to Proceed, Change Orders, Drawings, Certificate of Substantial Completion, Standard Specifications, Addenda, these General Conditions, Standard Details, Supplemental General Conditions, Special Conditions, Special Provisions, and Federal Contract Provisions when appropriate.
- 1.10 Contract Price - The total monies payable to the Contractor under the terms and Conditions of the Contract Documents.
- 1.11 Contract Specifications Book - A set of documents issued by the Commission for the Project which includes the Invitation to Bid, Information for Bidders, Bid Bond, Bid Form, Supplemental General Conditions, Special Conditions, Special Provisions, and other forms and attachments.

- 1.12 Contract Time - The specific date or the number of calendar days stated in the Bid Form for the substantial completion of the Work.
- 1.13 Contracting Officer - The authorized agent of the Commission who is administratively responsible for executing the Contract and performing other work as designated herein, including the duly authorized representative of the Contracting Officer.
- 1.14 Contractor - The person, firm or corporation with whom the Commission has executed the Contract.
- 1.15 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.
- 1.16 Day - A calendar day of 24 hours lasting from midnight one day to midnight the next day.
- 1.17 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 Drawings bound with the Specifications.
- 1.18 Engineer - The authorized agent of the Commission, who shall be the Chief Engineer of the Engineering and Construction Team or his duly authorized agent, said agent acting within the scope of the particular duties assigned or of the authority given.
- 1.19 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.
- 1.20 Field Order - A written order to the Contractor issued during construction by the Engineer for interpretations, clarifications, 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 and Standard Specifications - The part of the Contract Documents that is contained in a separate book and made a part of the Contract Documents by reference, written, approved, and issued as standards for construction contracts of the Commission.
- 1.23 Inspector - The authorized representative of the Engineer assigned to make detailed inspection of any or all portions of the Work or materials therefor.

- 1.24 Latent Defect – A hidden defect in the Work that reasonably careful inspection could not reveal prior to the expiration of the maintenance bond.
- 1.25 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.
- 1.26 Notice of Award - The written notice of the acceptance of the Bid from the Commission to the successful Bidder.
- 1.27 Notice to Proceed - Written communication issued by the Engineer 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 Information for Bidders and Section 01630.
- 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 Provide - Means furnish and install, complete in place.
- 1.32 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.
- 1.33 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 installation, construction, reconstruction, maintenance, repair, operation, and inspection, with the right of ingress and egress for a specified utility or facility, in perpetuity.
- 1.34 Rock - Any indurated material that requires drilling, wedging, blasting, or other methods of brute force to excavate.
- 1.35 Special Conditions - General requirements which are unique to a particular Contract, supplementing, modifying or deleting items covered in Division 1 of the Standard Specifications.

- 1.36 Special Provisions - Technical requirements which are unique to a particular Contract supplementing, modifying or deleting items covered in the various sections of Divisions 2 through 5 and 13 of the Standard Specifications. The Special Provisions for each Specification Section are delineated separately by the section number which it supplements, modifies or deletes, or they appear as new sections with a corresponding new section number.
- 1.37 Specifications - Special Conditions, Special Provisions, and Standard Specifications.
- 1.38 Standard Details - Commission details showing standard elements of construction, methods, and materials for use on Commission Contracts.
- 1.39 Structure - Structural entity including but not limited to building, manhole, ductbank, tank, foundation, road, pavement, pipe conductor, substation, pumping station.
- 1.40 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.
- 1.41 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.
- 1.42 Supplemental General Conditions - Modifications to General Conditions required for the Project.
- 1.43 Supplier - Any person or organization who supplies materials or equipment for the Work at any tier, including that fabricated to a special design, but who does not perform labor at the site.
- 1.44 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.
- 1.45 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.

## 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.

### 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. See Sections 01330 and 01450.

### 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
- Change Orders
- Addenda
- Supplemental General Conditions
- General Conditions
- Information for Bidders
- Bid Form
- Invitation to Bid
- Specifications
- Drawings
- Standard Details

Within the Specifications, the Documents shall be given precedence in the following order:  
Special Conditions  
Special Provisions  
Standard Specifications, Divisions 2 through 5 and Division 13  
Standard Specifications, Division 1

Division 1, General Requirements, applies to the execution of all Sections of the Specifications from Division 2 through Division 5 and Division 13. 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 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. See Section 01330.

#### 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. See Sections 01110 and 01500.
- 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. Mechanical and electrical equipment delivered to the Contract site shall be stored under roof or other approved covering, and on platforms above the ground. Enclosures for equipment shall be weatherproof and motors which are not totally enclosed shall be stored in a heated area with a minimum temperature of 50 degrees F. Electric control equipment that has internal electric heaters shall be stored in a dry heated area with electric heaters energized in accordance with manufacturer's recommendations. Valves shall be stored under roof or other approved cover and on wood platforms above the ground. 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.
- 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 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.
- 6.8 In accordance with the Commission 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. Should the Contractor by his operations knowingly cause or attempt to cause a violation of Section 3-3 of the Code of Ethics, all resulting delays and costs shall be assumed by the Contractor and the Engineer will have no responsibility therefor.

## 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. See Section 01450.

- 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 3 working 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 work, 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 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. See Section 01630.

## 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. See Section 01110.
- 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 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 Special Conditions. 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.

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

- 11.2 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. See Section 01150.
- 11.3 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.
- 11.4 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 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. 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.
- 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 change in the Contract Price and Time 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 all entitlement.

#### 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 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 in Article 14.1.3.1 plus a Contractor's Fee as provided in Article 14.1.3.2.

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.

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

no higher than the current rates recommended by the Associated Equipment Distributors (AED), based on the monthly rental rate divided by 176 to compute the hourly rate.

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.

- .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.

Cost of bonds (when required) 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 Contractor 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 costs 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 amount of credit to be provided by the Contractor to the Commission for any such change which results in a decrease of cost to the Contract, will be the amount of the net decrease plus an added deduction for the Contractor's Fee in the amount equal to 10 percent of the net decrease.

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. Extensions of time will not be granted until the Engineer is satisfied that the time extension is appropriate and justified.

## 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 Contract Documents.
- 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 Bid Form 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 part 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 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 an abandonment of all entitlement.
  - 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.

## 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 reexecute 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 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", Standard Specifications Section 02315, "Earthwork for Pipeline Construction", Section 02420 "Tunneling", and Section 02445 "Boring and Jacking and Free Boring", 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 his 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 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.

The Commission may have conducted subsurface test borings of the area in which the Work is to be performed. The resultant data obtained from these borings are either bound in the Contract Specifications Book or are maintained in the Commission's offices and may be inspected by the Contractor.

## 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. The Contracting Officer may elect to terminate the Contract for default or 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 adjustment will be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension or interruption, 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.

- 19.1.2 If 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, then the Contracting Officer may, without prejudice to any other right or remedy, after the Contractor and his Surety have been given a minimum of 14 days from the date of delivery of a Written Notice sent by Certified Mail, terminate the services of the Contractor for default and take possession of the Project and of all materials, equipment, tools, construction equipment, and machinery thereon owned by the Contractor, and finish the Work by whatever method it may deem expedient. In such case, the Contractor will not be entitled to receive any future payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, such excess will be paid to the Contractor except that the maximum payment will not exceed 10 percent of the original Contract. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Commission. Such costs incurred by the Commission will be determined by the Engineer and incorporated in a Change Order.
- 19.1.3 The Contracting Officer may, without cause and without prejudice to any other right or remedy, elect to terminate the Contract for the Commission's convenience. In such case, the Contractor shall be paid for all work executed and any expense incurred therefrom plus reasonable profit for that portion of the Work completed at the date of termination.
- 19.2 No claim under this Article shall be allowed: (1) unless the notification and documentation requirements of Article 32.1 to the Engineer are complied with, and (2) for any costs incurred more than 7 days before the Contractor notifies the Engineer in writing.
- 19.3 Where the Contractor's services have been so terminated by the Contracting Officer, said termination shall not affect any right of the Commission against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Commission due the Contractor will not release the Contractor from compliance with the Contract Documents.

19.4 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 executed and all expenses incurred.

## 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.

## 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.

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.

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.

- 21.3 Until approval of the final estimate for the entire Contract 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 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. See Article 22.2. Payment for materials and equipment not yet incorporated in the Work is limited to those items listed in Article 22.2. 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. The Commission will retain 10 percent of the amount of each payment until final completion and acceptance of all Work covered by the Contract Documents. If the Commission finds at any time after 50 percent of the Work has been completed, that satisfactory progress is being made and continues, it will not require additional retainage on the current and remaining estimates. If the Commission finds at any time that the amount retained is not sufficient to adequately protect the Commission's interests, it may retain such amounts as are necessary, in the Engineer's opinion, to ensure satisfactory completion of the Work. In such instance, the Engineer will provide to the Contractor an explanation and estimate to support such retention. When the Work is substantially complete, the retained amount may be adjusted to only that amount necessary to assure final completion.

- 22.1.1 With each payment estimate, the Contractor, when signing the payment estimate form, certifies that he has made payment from proceeds of prior payments and that he will make timely payments from the proceeds of progress and final payment then due him to his subcontractors and suppliers in accordance with his contractual arrangement with them. In addition, enter payments to all minority and or small local subcontractor(s)/suppliers(s) in accordance with Article 29.
- 22.1.2 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.
- 22.1.3 If the Engineer fails to respond to any payment estimate within 30 days after it is submitted, 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.
- 22.2 No payments shall be made for material or equipment not yet incorporated in the Work unless it is so designated and listed in the Supplemental General Conditions.
- 22.2.1 When designated and listed in the Supplemental General Conditions, payment will be made only for the materials listed, after delivery and stockpiling on the Contract site, provided submittals have been submitted and approved and the material is stored in accordance with the Contract Documents and as recommended by the manufacturer. Payment will not exceed manufacturer's invoice amount, less standard payment retention, and where equipment manuals are required, no payment will be made prior to approval of preliminary submittal of the Operations and Maintenance Manuals. Material, for which payment has been made, wholly or partially, shall not be removed from the Work site. Damage or loss of material and equipment remains the responsibility of the Contractor until the Certificate of Substantial Completion is issued. Payment for material and equipment shall not be construed as acceptance by the Engineer nor does it relieve the Contractor of the responsibility to incorporate material and equipment that complies with the Contract Documents. Contractor shall show evidence that he has paid the supplier of material and equipment prior to receiving the next payment. In addition, enter payments to all minority and or small local subcontractor(s)/supplier(s) in accordance with Article 29.
- 22.3 Prior to making a request for final payment, the Contractor shall have completed all Work under this Contract previously defined herein.

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.

- 22.4 The Contractor shall furnish to the Engineer, a Maintenance Bond (when required) as described in Article 25, to be in effect for the guarantee period(s) set forth in Article 31.
- 22.5 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.

#### 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 work 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 purchase and maintain insurance with companies acceptable to the Commission meeting requirements specified herein as will protect him from consequential liability which may arise out of or result from the Contractor's execution of the Work, whether done personally or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them maybe liable.

24.1.1 Unless already on file and current, certificates of insurance shall be filed with the Certified Insurance Statement form with the Technical Services Group within 10 days after receipt of the Notice of Award. These certificates shall contain a provision that policy coverages will not be canceled, altered or materially changed without 30 days prior written notice provided to the Commission, via registered or certified mail to the address below:

Washington Suburban Sanitary Commission  
Technical Services Group, 5<sup>th</sup> Floor  
14501 Sweitzer Lane  
Laurel, Maryland 20707

24.2 The Contractor shall provide the following:

24.2.1 General Liability Insurance. Such coverage to protect the Contractor and the Commission from any claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall include:

24.2.1.1 Independent Contractor's coverage;

24.2.1.2 Products and Completed Operations coverage;

24.2.1.3 Blanket Contractual Liability coverage;

24.2.1.4 Fire Legal Liability coverage;

24.2.1.5 Broad Form Property Damage coverage;

24.2.1.6 No Water Damage Exclusion;

24.2.1.7 The Commercial General Liability Policy shall not contain any exclusion endorsement for XCU (explosion, collapse, and underground hazard);

24.2.1.8 No "Employee Exclusion" with respect to personal injury coverage; and

24.2.1.9 The Commission shall be named as an additional insured as their interest may appear.

Limits of Liability to be not less than \$500,000 Each Occurrence and Aggregate (where usually applicable) Combined Personal Injury and Property Damage Liability.

#### 24.2.2 Automobile Liability Insurance

Such coverage shall protect the Contractor and the Commission from any claims arising out of the use of any owned, non-owned, and hired automobiles.

Limit of Liability to be not less than \$500,000 Each Accident Combined Bodily Injury and Property Damage Liability.

Waiver of subrogation applicable to the Commission and its employees while such employees are performing Work for or on behalf of the Commission.

#### 24.2.3 Workers' Compensation and Employers' Liability Insurance

Statutory coverage for place and type of work to be performed.

Employers' Liability Insurance Limits - Not Less Than:  
\$100,000 Each Accident - Bodily Injury by Accident  
\$100,000 Each Employee - Bodily Injury by Disease  
\$500,000 Policy Limit - Bodily Injury by Disease.

Waiver of subrogation applicable to the Commission and its employees while such employees are performing Work for or on behalf of the Commission.

#### 24.2.4 Umbrella Liability Insurance

Limit of Liability \$2,000,000 Each Occurrence and Aggregate (where usually applicable), unless otherwise specified.

### 24.3 Supplemental Coverage

Where so indicated in the Supplemental General Conditions of the Contract Documents, the Contractor shall supply the following additional insurance coverages:

#### 24.3.1 Railroad Protective Liability Insurance;

Policy limits of not less than \$2,000,000 combined single limit for Personal Injury and Property Damage for each occurrence, unless otherwise specified or required by the Railroad.

#### 24.3.2 Builders' Risk or equivalent coverage affording "All Risk" coverage acceptable to the



Commission.

Required for Contracts which include erection of a structure or facility or an addition to or renovation of an existing structure or facility.

Unless otherwise specified in the Supplemental General Conditions, the amount of coverage shall be based upon the 100% projected completed value of the Work and shall be in effect prior to Work commencing and stay in effect until the Contract is completed by the Contractor and accepted by the Commission.

## ARTICLE 25 CONTRACT SECURITY

25.1 For Contracts \$100,000 and less, Performance, Labor and Material Payment, and Maintenance Bonds are not required. Within the time specified in the Information For Bidders the Contractor shall furnish 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 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 (when required) 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.
- 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.
- 28.3 This project is located within an area of other ongoing construction, no compensatory claims for delay resulting from the activities of others will be allowed. Coordinate access to the site and working areas with other contractors under contract to the Commission or others performing work in the area.

## 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 Information for Bidders.
- 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 50 percent of the Contract Price.
- 29.3 The Contractor shall report the use of subcontractors, manufacturers, and suppliers during the course of the Contract as follows:
  - 29.3.1 The Contractor shall submit along with the first payment request a list of all proposed subcontractors, manufacturers, and suppliers, including the proposed work and the estimated dollar value and percent of the Work each is expected to perform.
  - 29.3.2 The Contractor shall submit along with the request for final payment a list of all subcontractors, manufacturers, and suppliers used, including the work performed and the dollar amount and percent of the Work performed. The Engineer may withhold final payment until this list is submitted.
  - 29.3.3 Utilizing the WSSC's web-enabled tracking and compliance system the Contractor shall enter all payment information no later than the 15th of each month until final payment and the listed subcontractor(s)/supplier(s) shall be required to validate payment by the 25th of each month until final payment.
  - 29.3.4 Failure to report payments on the web-enabled system as described above will result in delay of payment(s). Final payment will not be made until all subcontract payment(s) are reported and verified.
  - 29.3.5 Failure to comply with the requirement of this Clause will be considered in the evaluation of the Contractor's responsibility in performing future contracts
- 29.4 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.

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.
- 29.5 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bond 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.

29.5.1 All subcontractors shall be specifically bound by the terms of Article 7.4.

29.6 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.

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 during the Inspector's absence 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.

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 leakproof 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 or dispute concerning termination of the services of the Contractor under General Conditions Article 19, timeliness of a Demand for Arbitration to the American Arbitration Association under this Article, or timeliness of the Contractor's payment of the administrative fees of the American Arbitration Association under this Article, are not subject to submission to the Engineer, Contracting Officer or binding arbitration, but shall be directly decided in the appropriate court in and for the State of Maryland.

Any other claim, dispute or other matter in question between the Contractor and the Commission arising under the terms and provisions of this Contract, including without limitation a claim for breach of contract, shall be initially submitted in writing by the Contractor to the Engineer within the time period established by other applicable provisions of these General Conditions, or if none is established, within thirty days of the event giving rise to the claim, dispute or other matter. Thereafter, the Contractor shall document his position on the claim, dispute or other matter within thirty days by filing with the Engineer a written presentation setting forth in detail the following:

- 32.1.1 Explanation of claim, including reference to contract provisions upon which it is based;
- 32.1.2 Amount of claim;
- 32.1.3 Facts upon which claim is based;
- 32.1.4 Pertinent data and correspondence that the Contractor relies upon to substantiate claim; and
- 32.1.5 A signed certification statement by a senior official, officer, or general partner of the Contractor and all subcontractors and suppliers making claim, that to the best of the person's knowledge and belief, the claim is made in good faith, supporting data are accurate and complete, and amount requested accurately reflects the contract adjustment for which the person believes the Commission is liable.

No claim, dispute or other matter may be asserted against the Commission unless the

Contractor has provided the written notice required by this paragraph.

Actual notice or knowledge of any such conditions by the Engineer, the Commission or any other person or entity shall not relieve the Contractor of the duty to give the written notice required by this paragraph. Failure to notify the Engineer or to document a claim within the time prescribed above shall constitute an abandonment of all entitlement.

- 32.2 Unless otherwise agreed by the parties, the Engineer will issue a Final Decision of the Engineer in writing. The Engineer's decision shall be final and binding upon the parties unless within ten days of receipt of the Final Decision of the Engineer, the Engineer and the Contracting Officer receive a Written Notice of Appeal to the Contracting Officer from the Contractor. The written Final Decision of the Engineer shall be a condition precedent to any exercise by the Contractor to appeal to the Contracting Officer.
- 32.3 The Contracting Officer is authorized, subject to the limitations and conditions imposed herein, to settle, compromise, pay or otherwise adjust any claim, dispute or other matter in which a Final Decision of the Engineer has been issued and timely appealed to the Contracting Officer as described above. Within thirty days of the receipt of the Notice of Appeal by the Contracting Officer, the Contractor and the Engineer shall receive the Contractor's written presentation in the format prescribed by the Contracting Officer, setting forth in detail the basis of the claim presented to the Engineer, the contract provision or provisions relied upon, specific designation of all documents and witnesses which support the claim, and the relief sought. Failure to file the written presentation as prescribed above within the thirty days required by this paragraph shall constitute an abandonment of the appeal and acceptance of the Engineer's decision as final and binding on the parties. Within twenty days of receipt of the Contractor's written presentation, the Engineer will file with the Contracting Officer a written presentation, setting forth in detail the Engineer's position. In his sole discretion, the Contracting Officer may convene an informal hearing upon 7 days notice to both parties, or request either party to supply additional written information.
- 32.4 The Contracting Officer will issue a decision in writing within thirty days after receipt of the Engineer's written presentation or forty-five days if an informal hearing is convened. The Contracting Officer's decision shall be final and binding on the parties, unless within thirty days of the receipt of the decision, the Contractor files a Demand for Arbitration in accordance with Article 32.5 for matters other than in Article 32.4.1, or unless within ninety days of the receipt of the decision the Contractor initiates appropriate legal proceedings in the courts for Prince George's or Montgomery County for claims or disputes concerning the following matters.

- 32.4.1 Timeliness of written notification or documentation to the Engineer under General Conditions Articles 2, 13, 15, 17, or 32.

Timeliness of appeal of the Final Decision of the Engineer to the Contracting Officer under this Article.

Timeliness of the Contractor's written presentation to the Contracting Officer under

this Article.

This provision constitutes a contractually agreed to statute of limitations for the filing of a Demand for Arbitration or for the initiation of legal action against the Commission to challenge the Contracting Officer's decision. The rendering of a written decision by the Contracting Officer and compliance by the Contractor with Articles 32.1, 32.2 and 32.3 of this Article shall be a condition precedent to any exercise by the Contractor of the rights and remedies provided for under this Contract, including the right to file a Demand for Arbitration or the right to initiate appropriate legal proceedings described in this paragraph.

## 32.5 Arbitration

32.5.1 Any claim or dispute concerning termination of the services of the Contractor under General Conditions Article 19, timeliness of a Demand for Arbitration to The American Arbitration Association under this Article, timeliness of the Contractor's payment of the administrative fees of the American Arbitration Association, or the matters listed in Article 32.4.1., are not subject to binding arbitration. These matters shall be decided in the appropriate court in and for the State of Maryland. Subject to the limitations and conditions imposed in this Article, any other claim, dispute or other matter in question between the Contractor and the Commission arising under the terms and provisions of this Contract, including without limitation a claim for breach thereof, are subject to binding arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association, except as those rules are modified by the terms of the Contract Documents. The terms and provisions of the Contract Documents are subject to interpretation under the laws of the State of Maryland.

32.5.2 A Demand for Arbitration shall be filed in writing with the American Arbitration Association, and a copy shall be filed with the Engineer and the Contracting Officer. Demand for Arbitration shall in no event be made on any claim, dispute or other matter in question, which would be barred by the applicable statute of limitations or by the provisions of this Article. Arbitration proceedings shall be held in a location selected by the Commission. Failure of the demanding party to pay the administrative fees of the American Arbitration Association within thirty days of the receipt of notice from the Association will constitute abandonment of the Demand for Arbitration and acceptance of the decision of the Contracting Officer as final and binding on the parties.

32.5.3 Demands for Arbitration shall be limited to issues specifically decided by the Engineer and by the Contracting Officer. Consolidation of individual Final Decisions of the Engineer will not be permitted. Each Final Decision of the Engineer shall be arbitrated separately before the American Arbitration Association.

32.5.4 The Contractor shall not be permitted to present any evidence in the arbitration proceedings that was not included in the written presentation to the Engineer and Contracting Officer, required by Articles 32.1 and 32.3. It is further specifically agreed by the parties that the Award of the Arbitrator(s) shall contain a summary of



the factual basis of the award and the arbitrator(s) rationale.

32.6 The time periods specified in this Article are essential conditions of the Contract Documents. Time is of the essence for all periods of time set forth in this Article. No claim by the Contractor will be allowed if asserted after Final Payment under this Contract.

32.7 The Contractor shall not be entitled to prejudgment interest on amounts found due the Contractor by decision of the Engineer or Contracting Officer or on amounts on an award of arbitrator(s) or awarded in a court judgment. The Contractor will only be allowed postjudgment interest on award of arbitrator(s) or court judgment amounts, which interest shall begin to run thirty days from the date of receipt of an award of arbitrator(s) or court judgments.

However, in the event an appeal of an award of arbitrator(s) or court judgment is filed, payment of the award of arbitrator(s) or court judgment shall be suspended until such time as the appellate court issues its mandate.

32.8 In any claim, dispute, or other matter in which a Contractor has filed a claim, a Demand for Arbitration or initiated litigation, the Contractor shall allow the Engineer, or his representatives, 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 facts asserted.

The Contractor shall make available at his office at reasonable times, material and persons described above for interview, examination, audit or reproduction. The Contractor 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.

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.

32.9 The Contractor shall diligently carry on the Work and maintain the progress schedule during any dispute, appeal, arbitration, or court proceedings.

### 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.

### ARTICLE 34 ETHICS

34.1 Personnel of the Commission shall be guided in their actions by the WSSC Code of Ethics; Resolution No. 2003-1669 adopted June 11, 2003. 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 Acquisition Office. See abstract in the attachment section entitled “Ethics in Public Contracting”.

#### ARTICLE 35 BRIBES

35.1 A bribe or attempt to bribe any employee or officer of the Commission by the Contractor shall be considered as execution of the Contract in bad faith, and shall thus empower the Commission to complete the Work and deduct the entire cost thereof from any monies due or to become due the Contractor under the Contract, all as set forth in Article 19.1.2.

#### 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 of Commission employees 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

38.1 Debarment actions taken against a contractor will be done following standard procedure CON 2000-01, Debarment of Construction Contractors- Engineering & Construction, adopted September 27, 2000, as amended. This document is available for review in the Acquisition Office.

#### 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 Engineer shall provide a reasonable opportunity to cure the defect. If the Contractor fails to cure the defect within the time period granted, the Engineer 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.

39.4 If the Contractor willfully fails to comply with the requirements of the nondiscrimination clause, the Engineer may compel the Contractor to continue to perform under the Contract as provided in Maryland Annotated Code, Article 29, § 3-102(h)(3).