

PART II
WASHINGTON SUBURBAN SANITARY COMMISSION
PROCUREMENT OFFICE
GENERAL CONDITIONS – PROFESSIONAL SERVICES

GENERAL CONDITIONS – PROFESSIONAL SERVICES

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ARTICLE 1. CONTRACT DOCUMENTS

- 1.1. The Contract Documents include WSSC's Procurement Regulations, the Solicitation, Invitation for Bids, Bonds, Notice of Award, Notice to Proceed, Change Orders, Drawings, Certificate of Substantial Completion, Specifications, these General Conditions, Special Conditions, Standard Details, Amendments, Addenda, Contract Execution Page, and Federal Contract Provisions when required.
- 1.2. 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.
- 1.3. In resolving conflicts, errors, and discrepancies within the Contract Documents, the Documents shall be given precedence in the following order:

Federal Contract Provisions (only if identified and incorporated in the Contract Documents)
WSSC Procurement Regulations
Change Orders
Amendments
Addenda
Special Conditions
General Conditions
Invitation for Bids
Contract Execution Page
Notice to Proceed
Notice of Award
Specifications/Statement of Work
Drawings

ARTICLE 2. ACCESS TO INFORMATION, PERSONNEL, COMMISSION FACILITIES

- 2.1 The Commission shall furnish to the Contractor all information and personnel that the Contractor shall deem pertinent in the execution of the assignment under this Agreement.
- 2.2 The Commission shall assist and make provisions for the Contractor to enter upon Commission facilities as required for the Contractor to perform work under this Agreement.

ARTICLE 3. WORKING HOURS

- 3.1. The Contractor will only be permitted access to the Commission's facilities during the general working hours of 7:00 a.m. to 3:30 p.m., local prevailing time, Monday through Friday, except on Commission observed holidays. Any other times will be noted in the solicitation documents.
- 3.2. If it becomes necessary for the Contractor to perform work during Commission non-working hours, permission to work must be granted by the Project/Contract Manager. The Contractor will be required to furnish to the Project/Contract Manager a list of the Contractor's employees who will be working. No additional compensation shall be paid for hours worked during non-working hours.

ARTICLE 4. HOLIDAYS

- 4.1. Access to Commission facilities will be denied on holidays. It is the responsibility of the Contractor to determine on which specific dates these holidays are observed by the Commission.

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- 4.2. The Commission observes the following holidays: New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, General Election Day (even numbered years) and Inauguration Day.

ARTICLE 5. TIME EXTENSION

- 5.1. All time extensions approved by the Commission will be issued in writing as a formal change to this Agreement and as described in Article IV, Change Orders, of the Agreement. Failure to perform all work in accordance with the schedule, except where approved extensions exist, will be taken into consideration when evaluating the Contractor for future work with the Commission.

ARTICLE 6. COMPENSATION

- 6.1. Any costs incurred by the Contractor in excess of the agreed upon compensation and without the issuance of a formal written change order shall not be paid by the Commission.
- 6.2. The Contractor shall submit periodic invoices for payment, but not more frequently than monthly, for work and services performed under this Agreement. Such invoices shall be prepared by the Contractor supplemented and accompanied by supporting data, which is satisfactory to the Commission. Each invoice shall also include a running total of all funds billed under this Agreement to date.
- 6.3. It is understood and agreed that the compensation herein provided to be paid by the Commission is for the services of the Contractor on the project as described herein and does not include any assistance in preparation for or during the progress of litigation or arbitration to which the Commission is a party. The Contractor agrees to assist the Commission in matters of litigation upon request and upon reasonable compensation to be negotiated for such services requested. The Contractor shall not be entitled to any compensation for any assistance or services requested or rendered in any matter involving claims by third parties against the Commission arising out of the fault or negligence on the part of the Contractor or his agents.

ARTICLE 7. PROPERTY DAMAGE

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

ARTICLE 8. RIGHT TO AUDIT

- 8.1. In accordance with Procurement Regulation § 4-602, the Contractor agrees to maintain books, accounts, records, documents and other evidence directly pertinent to the performance of this Agreement in accordance with generally accepted accounting principles and practices consistently applied. (The foregoing constitutes "records" for purposes of this Agreement).
- 8.2. The Contractor's facilities and offices, or such part thereof as may be engaged in the performance of this contract, and records shall be subject at all reasonable times to audit, examination, inspection or reproduction by the Commission, the State of Maryland, or any of their authorized representatives.
- 8.3. The Contractor shall preserve and make available its records until either five (5) years after the contract's expiration or after the acceptance of work, whichever is later, and for such longer

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period, if any, as is required by applicable statute, or by other provisions of this contract, or as follows:

- 8.3.1. If the Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any resulting final settlement.
- 8.3.2. Records, which relate to appeals of disputes, litigation, or settlement of claims arising out of the performance of this Agreement, shall be retained until final disposition of such appeals, litigation, or claims.
- 8.4. The Contractor shall insert the substance of this section in each subcontract issued hereunder that is not on a firm fixed-price basis

ARTICLE 9. FAILURE TO PERFORM

- 9.1. Failure of the Contractor to (a) deliver or perform the required goods or services within the time specified or within a reasonable time as interpreted by the Chief Procurement Officer or (b) to make replacements of rejected articles immediately or as directed by the Chief Procurement Officer shall constitute authority for the Chief Procurement Officer purchase in the open market goods or services of comparable grade to replace the goods or services not delivered or rejected. On all such purchases, the Contractor shall reimburse the Commission within a reasonable time as specified by the Acquisition Director for any expense incurred in excess of Contract prices, including any administrative costs.
- 9.2. Should public necessity demand it, the Commission reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Chief Procurement Officer. The Contractor shall not be liable for any excess costs if acceptable evidence has been submitted to the Chief Procurement Officer that failure to perform this Contract was due to causes beyond the control and without the failure or negligence of the Contractor.
- 9.3. The remedies provided in this General Condition are in addition to any other rights and remedies provided by law or under any other provisions of this Contract.

ARTICLE 10. TERMINATION

- 10.1. In accordance with WSSC Procurement Regulation § 6-105, the Commission may, by written notice to the Contractor, terminate this Agreement in whole or in part at any time, either for the Commission's convenience or default because of the failure of the Contractor to perform services timely, failure to meet standards required, or fulfill the Contractor's obligation under this Agreement. Upon receipt of such notice, the Contractor shall:
 - 10.1.1. Immediately discontinue all services affected upon receipt of termination notice, and
 - 10.1.2. Deliver to the Commission all designs, surveys, data, drawings, specifications, reports, computations, estimates, summaries, computer programs, and such other information and materials as may have been provided by the Commission or accumulated by the Contractor in performing this Agreement, whether completed or in progress.
- 10.2. If the termination is for the convenience of the Commission, the Contractor shall only be paid for work performed through the date of termination. In addition, the Commission shall pay all other direct costs (reimbursable expenses) which are deemed by the Commission as reasonably and necessarily incurred by the Contractor in terminating the work under this Agreement, with total compensation being limited to the total price established for services hereunder. If the Contractor does not agree on the amount due as a result of the contract's termination for convenience, the Contractor may file a timely claim under WSSC Procurement Regulation § 6-104.

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10.3. If the termination is due to the Contractor default for failure to fulfill the Agreement's obligations, the Commission may take over the work and prosecute same to completion by Agreement or otherwise. If the Contractor disputes the termination of the Agreement for default, the Contractor may file a timely claim under WSSC Procurement Regulation § 6-104.

ARTICLE 11. FORCE MAJEURE

11.1. Neither party shall be considered in default in the performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered or prevented by any cause which is beyond the reasonable control of such party (hereinafter called "Force Majeure"). Force Majeure includes but is not limited to any of the following if reasonably beyond the control of the party claiming Force Majeure: war (declared or undeclared), blockages, hostilities, revolutions, riots, strikes, lockouts or other labor disturbances, epidemics, fires, storms, delays or interruptions in transportation, or any laws, regulations or ordinances of any government, governmental agency or court having or claiming to have jurisdiction over any part of the services, including laws, regulations or ordinance pertaining to the protection of the environment, or obtaining permits required by any such government, governmental agency or court, or any other cause (whether or not of kinds specifically mentioned herein) that is not reasonably within the control of the party claiming Force Majeure.

ARTICLE 12. BRIBES

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

ARTICLE 13. CONTRACT DISPUTE RESOLUTION

13.1. All claims by a Contractor against WSSC which includes without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission shall be resolved in accordance with Procurement Regulation §6-104.

ARTICLE 14. COVENANT AGAINST CONTINGENCY FEES

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

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

ARTICLE 15. INDEMNIFICATION AGREEMENTS

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

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

15.2. **PROFESSIONAL LIABILITY:** The Contractor shall defend, indemnify and save harmless the Commission from all suits, actions and damages or costs of every name and description, including reasonable attorneys' fees to which the Commission may be subject or put by reason injury to persons (bodily injury, including death or personal injury) or property damage as a result of Contractor's professional services, whether caused or alleged to be caused by the negligence or willful acts of misconduct on the part of the Contractor, the Contractor's servants or agents. Monies to become due the Contractor under this Agreement as may be considered necessary by the Commission shall be retained by the Commission until such suits or claims for damages shall have been settled or until the Contractor furnishes to the Commission satisfactory evidence of insurance coverage with respect to such suits or claims or post a bond in the amount of the dispute in a form satisfactory to Commission.

ARTICLE 16. OWNERSHIP RIGHTS

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

16.2. All reports shall be the sole property of the Commission.

ARTICLE 17. INTELLECTUAL PROPERTY COPYRIGHT

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

17.2. Further, the CONTRACTOR and CONTRACTOR'S employees agree that the rights granted to the Commission by this Clause are irrevocable. No termination of this Agreement shall have the effect of rescinding, terminating, or otherwise invalidating the rights acquired pursuant to the provisions of this "Intellectual Property Copyright" Clause.

17.3. The use of Subcontractors or third parties in developing or creating input into any copyrightable materials produced as part of this Agreement is prohibited unless such Subcontractors or third parties agree to include the provisions of this Clause as part of any Contract they enter into with the Contractor for Work or related to Work pursuant to this Agreement.

ARTICLE 18. DISSEMINATION OF INFORMATION

18.1. The Contractor shall:

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

ARTICLE 19. PATENTED DEVICES, MATERIALS AND PROCESSES

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

ARTICLE 20. CLAIMS:

- 20.1. Any Claim by the Contractor against the Commission arising under or relating to this Contract shall be filed and adjudicated in accordance with the requirements and procedures set forth in WSSC Procurement Regulation § 6-104.02.
- 20.2. Any Claim by the Commission against the Contractor arising under or relating to this Contract shall be filed in the federal or state courts located in Prince George's County, Maryland or Montgomery County, Maryland. However, the Commission may assert any set-off amount in any claim filed by the Contractor against the Commission.
- 20.3. This Contract and any Claim arising under or relating to it shall be governed in accordance with the law of the State of Maryland.
- 20.4. The Contractor shall diligently carry on the Work and maintain the progress schedule during any dispute, appeal, or court proceeding arising from or related to a Claim.
- 20.5. No claim by the Contractor shall be allowed if asserted after final payment under this Contract

ARTICLE 21. CONFLICT OF INTEREST

- 21.1. Contractor shall be required to submit a statement indicating that it has conducted a review for conflict of interest and has ascertained that there is currently no conflict of interest in the Contractor's representation of WSSC.

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ARTICLE 22. DELAY OF WORK

- 22.1. If the performance of all or any part of the work of this Contract is delayed or interrupted (a) by an act of the Chief Procurement Officer in the administration of this Contract that is not explicitly or implicitly authorized by this Contract, or (b) by a failure of the Chief Procurement Officer to act within the time specified in this Contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by the delay or interruption and the Contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other Contractual provision affected by the delay or interruption.
- 22.2. However, no adjustment shall be made under this General Condition for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other provision of this Contract.
- 22.3. A delay claim shall be filed according to WSSC Procurement Regulations § 6.104.02. A delay claim shall not be allowed (a) for any costs incurred more than twenty (20) calendar days before the Contractor shall have notified the Chief Procurement Officer in writing of the act or failure to act involved, and (b) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the Contract.

ARTICLE 23. WARRANTY FOR PROFESSIONAL SERVICES

- 23.1. The Contractor acknowledges that he is aware that the professional services provided herein are furnished to the Commission with the understanding that the Commission, in accepting these services, relies upon the Contractor's particular skill and expertise. Accordingly, the Contractor warrants that the professional services provided are of a professional quality and that such services meet or exceed the prevailing practices and standards of the trade from which the services are provided.
- 23.2. Both parties also recognize that the Commission may implicitly suspend the work by reasonable delays in its review, comment and action on the submitted data, plans, reports and other documents transmitted to the Commission, for which there shall be no additional compensation.
- 23.3. The Commission's right to suspend this Contract is in addition to and not in substitution for the Commission's right to terminate as stated herein.

ARTICLE 24. MARYLAND LAW

- 24.1. The Contractor agrees to obtain and maintain in good standing all corporate filings, licenses, and approvals, as required by Maryland law. The Contractor will notify WSSC of its resident agent's contact information.
- 24.2. This Agreement shall be interpreted in accordance the laws of the State of Maryland.

ARTICLE 25. PUNITIVE DAMAGES

- 25.1. In any action by the Contractor against the Commission or its agents, there shall be no liability for punitive damages.

ARTICLE 26. PUBLIC INFORMATION ACT NOTICE

- 26.1. Bidders must specifically identify those portions of their bids, if any, which they deem to contain confidential or proprietary information or trade secrets and must provide any justification why

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such materials, upon request, should not be disclosed by the Commission under the Maryland Public Information Act, State Government Article, Sections 10-611, et. seq., of the Annotated Code of Maryland.

ARTICLE 27. CONTRACTOR ABUSE, USE, SALE OR POSSESSION OF DRUGS OR INTOXICANTS

27.1. The use, possession, sale or distribution of drugs or intoxicants by the Contractor, 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 28. SMOKING

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

ARTICLE 29. LEGAL ADDRESS

29.1. The address given in the Bid shall be the legal address of the Contractor. Such address may be changed at any time by notice in writing delivered to the Chief Procurement Officer. The mailing of any notice to this legal address, postage pre-paid to the Contractor, shall be deemed to be a legal and sufficient service upon the Contractor.

ARTICLE 30. SECURITY

30.1. The Commission will require the Contractor to submit background investigations on all employees, including subcontractor's employees, who will be performing work on this Contract. The background investigations shall be completed by a Commission approved agency and shall include work, driving, and criminal history. The Commission has retained the services of a background investigation agency to perform such investigations. All employees, including subcontractor's employees, working on this Contract shall submit a completed Applicant Release & Authorization Form to the background investigation agency within seven (7) calendar days after receipt of Recommendation for Award. The Recommendation for Award will include documentation to have the background investigations performed. The cost to perform this service will be billed directly to the Commission from the background investigation agency. The employees' report will be submitted to the Commission's Security Group for review and will then be destroyed. All employees must be approved in writing prior to starting any work at any Commission facility. If any employee is not approved to work on this Contract, the Contractor may resubmit for approval other proposed employees within seven calendar days upon issuance of written disapproval notification. The Commission reserves the right to reject any employee, sub-contractor or the Contractor, as a result of the findings of background investigations.

30.2. The Contractor's employees shall be issued photo identification cards. Identification cards must be worn at all times while on any Commission property. Contractor employees found on-site without proper identification will be immediately removed from Commission property. The design of identification cards shall be reviewed and approved by the Commission prior to issuance. Identification cards for employees who are no longer associated with the project, for any reason, will be immediately recovered by the Contractor. The Contractor is responsible to control and inventory all identification cards issued so that cards are not obtained or used by unauthorized individuals.

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30.3. All project participants needing either electronic or hardcopy documents dealing with critical facilities or sensitive information will be required to make application with, and receive approval from the Commission prior to receiving this information. Permission to receive said documents (herein referred to as “sensitive”) will pertain only to the individual approved. Sensitive documents received from the Commission must be handled consistent with the terms of non-disclosure required for application. Contractor is responsible to restrict use of sensitive documents to project participants only and shall take appropriate measures to prevent distribution of sensitive documents to anyone inside or outside of the Contractor’s company except Contractor’s project participants. After completion of project, all sensitive documents remaining in the Contractor’s possession shall continue to be governed under the terms of non-disclosure and must continue to be stored in a secure manner.

ARTICLE 31. ASSIGNMENT

31.1. In accordance with Procurement Regulation §4-108.01, this WSSC Contract is not transferable or otherwise assignable without the written consent of the Chief Procurement Officer provided, however, that the Contractor may assign monies receivable under a contract after due notice in writing to WSSC.

ARTICLE 32. AUTHORIZATION

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

ARTICLE 33. CONFIDENTIALITY

33.1. The Contractor and its employees agree that all findings, memoranda, correspondence documents or records of any type, whether written, electronic, or oral and all documents generated by the Contractor its Subcontractors as a result of the Commission's request for services under this Contract, are confidential records (Records). Neither the records shall be released, nor their contents disclosed to any party other than the Project Manager, or assignee, and the Contract Administrator or assignee. The Contractor and his employees agree that all oral or written inquiries regarding the status of any Records shall be referred to the Project Manager or assignee. The Offeror agrees to include the provisions of this Clause as part of any Contract or Agreement the Offeror enters into with Subcontractors or other third parties for work related to Work pursuant to this Contract. No termination of this Contract shall have the effect of rescinding, terminating, or otherwise invalidating this Clause. The covenants set forth in this Clause shall survive this Contract and shall remain in effect in perpetuity.

ARTICLE 34. PROVISION TO EXTEND CONTRACT FOR NINETY (90) DAYS

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

ARTICLE 35. PROCUREMENT REGULATIONS

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

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ARTICLE 36. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

36.1. The acceptance by the Contractor of final payment shall constitute 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.

ARTICLE 37. INDEMNIFICATION

37.1. 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.

37.2. 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 38. ETHICS

38.1. Personnel of the Commission and the Contractor and its personnel and agents shall be guided in their actions by the WSSC Code of Ethics; Resolution No. 2003-1669 adopted June 11, 2003, and any subsequent revisions and amendments thereto. Additionally, standards for ethical, professional procurement behavior such as established by the Institute for Supply Management (formerly NAPM) entitled “Principles and Standards of Ethical Supply Management Conduct” are to be followed. Both documents are available for review in the Office of Chief Procurement Officer. See abstract in the attachment section entitled “Ethics in Public Contracting.”

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

ARTICLE 39. SEXUAL HARASSMENT

39.1. 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 40. DEBARMENT AND SUSPENSION

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

ARTICLE 41. NONDISCRIMINATION POLICY

41.1. 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.

41.2. The Contractor shall include a similar nondiscrimination clause in all subcontracts.

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

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