GENERAL CONDITIONS – PROFESSIONAL SERVICES

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GENERAL CONDITIONS – PROFESSIONAL SERVICES

GENERAL TERMS AND CONDITIONS

ARTICLE 1 CONTRACT DOCUMENTS

1.1 The Contract Documents include WSSC's Procurement Regulations (WSSC Code of Regulations, Title 6, Chapter 6.15), the Solicitation, Bonds, Notice of Award, Notice to Proceed, Change Orders, Drawings (when applicable), Certificate of Substantial Completion, Specifications, these General Conditions, Special Conditions, Standard Details, Amendments, Addenda, Contract Execution Page, Appendix A from the Solicitation, Appendix B from the Solicitation, Appendix C forms completed by the CONSULTANT, and Federal Contract Provisions when required.

1.2 The intent of the Contract Documents is that the CONSULTANT shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental work necessary to complete the Project in an acceptable manner, ready for use, occupancy or operation by the COMMISSION.

1.3 In resolving conflicts, errors, and discrepancies within the Contract Documents, the Documents shall be given precedence in the following order:

Federal Contract Provisions (only if identified and incorporated in the Contract

Documents) WSSC Procurement Regulations

Change Orders

Amendments

Addenda

Special Conditions

General Conditions

Contract Execution

Page Notice to

Proceed Notice of

Award

Specifications/Statement of Work

Drawings (when applicable)

Appendix B to the Solicitation (Insurance & Bonding

Requirements) Appendix A to the Solicitation (MBE and/or

SLBE requirements)

Appendix C to the Solicitation (Commission Forms completed by CONSULTANT)

ARTICLE 2. ACCESS TO INFORMATION, PERSONNEL, COMMISSION FACILITIES

2.1 The COMMISSION shall furnish to the CONSULTANT all information and personnel that the CONSULTANT shall deem pertinent in the execution of the Work under this Contract.

2.2 The COMMISSION shall assist and make provisions for the CONSULTANT to enter upon COMMISSION facilities as required for the CONSULTANT to perform work under this Contract.

ARTICLE 3 WORKING HOURS

3.1 The CONSULTANT will only be permitted access to the COMMISSION's facilities only during the working

hours indicated in the scope of work.

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

ARTICLE 4 HOLIDAYS

4.1 Access to COMMISSION facilities may be denied on holidays. It is the responsibility of the CONSULTANT to determine on which specific dates these holidays are observed by the COMMISSION.

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

ARTICLE 5. TIME EXTENSION

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

ARTICLE 6. COMPENSATION

6.1 Any costs incurred by the CONSULTANT 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 CONSULTANT will submit periodic invoices for payment, but not more frequently than monthly, for work and services performed under this Contract. Such invoices shall be prepared by the CONSULTANT supplemented and accompanied by supporting data, which is satisfactory to the COMMISSION. A list of employees employed by the CONSULTANT on each invoice to perform the direct services and their respective hourly rates shall be included on each invoice along with a brief description of the work performed and the day it was done. Each invoice shall also include a running total of all funds billed under this Contract 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 CONSULTANT on the project as described herein and does not include any assistance in preparation for or during the progress of litigation to which the COMMISSION is a party The CONSULTANT agrees to assist the COMMISSION in matters of litigation upon request and upon reasonable compensation to be negotiated for such services requested. The CONSULTANT shall not be entitled to any compensation for any assistance or services requested or rendered in any matter involving claims by third parties against the COMMISSION arising out of the fault or negligence on the part of the CONSULTANT or his agents

6.4 For services performed by the CONSULTANT under this Contract, and as full and complete compensation therefore, except as otherwise expressly provided herein, the COMMISSION will pay to the CONSULTANT allowable costs and fees as set forth in the pricing sheet.

6.5 The Contract value shall not be exceeded without a formal change order being issued to this Contract. Any costs incurred by the CONSULTANT in excess of the Contract value without a formal change order to this Contract shall not be paid by the COMMISSION.

GENERAL CONDITIONS – PROFESSIONAL SERVICES

ARTICLE 7. CHANGES

7.1 The COMMISSION may, at any time, by written order, make changes within the general scope of this Contract in the services or Work to be performed. If such changes cause an increase or decrease in the CONSULTANT's cost of, or time required for, performance of any services under this Contract, whether or not changed by any written order, the CONSULTANT may submit a claim in accordance with WSSC Code of Regulations, Title 6, Chapter 6.15.560(b).

7.2 No services for which additional compensation will be charged by the CONSULTANT shall be accepted without the written authorization of the COMMISSION.

ARTICLE 8. PROPERTY DAMAGE

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

ARTICLE 9. PROJECT MANAGEMENT

9.1 The COMMISSION and the CONSULTANT shall each designate a Project/Contract Manager within fourteen
(14) days from date of this Contract to represent each party respectively and be responsible as the individual in charge of administering and carrying out provisions of this Contract. Once so designated by the CONSULTANT this Project/Contract Manager shall not be changed unless specifically allowed or requested by the COMMISSION.

9.2 The CONSULTANT shall advise the COMMISSION of the Project/Contract Manager's qualifications and the COMMISSION shall have the right of approval or rejection of the CONSULTANT's designated Project/Contract manager

ARTICLE 10. FAILURE TO PERFORM

10.1 Failure of the CONSULTANT to (a) deliver or perform the required goods or services within the time specified or within a reasonable time as interpreted by the Chief Procurement Officer or (b) to make replacements of rejected articles immediately or as directed by the Chief Procurement Officer shall constitute authority for the Chief Procurement Officer purchase in the open market goods or services of comparable grade to replace the goods or services not delivered or rejected. On all such purchases, the CONSULTANT shall reimburse the COMMISSION within a reasonable time as specified by the Chief Procurement Officer for any expense incurred in excess of Contract prices, including any administrative costs.

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

10.3 The remedies provided in this General Condition are in addition to any other rights and remedies provided by law or under any other provisions of this Contract.

ARTICLE 11. TERMINATION

11.1 In accordance with WSSC Code of Regulations, Title 6, Chapter 6.15.560, the COMMISSION may, by written notice to the CONSULTANT, terminate this Contract in whole or in part at any time, either for the COMMISSION's convenience or default because of the failure of the CONSULTANT to perform services timely, failure to meet standards required, or fulfill the CONSULTANT's obligation under this Contract. Upon receipt of such notice, the CONSULTANT shall:

11.1.1 Immediately discontinue all services affected upon receipt of termination notice, and

11.1.2 Deliver to the COMMISSION any work product, including but not limited to all designs, surveys, data, drawings, specifications, reports, computations, estimates, summaries, computer programs, and such other information and materials as may have been provided by the COMMISSION or accumulated by the CONSULTANT in performing this Contract, whether completed or in progress.

ARTICLE 12. RIGHT TO AUDIT

12.1 In accordance with WSSC Code of Regulations, Title 6, Chapter 6.15.450, the CONSULTANT agrees to maintain books, accounts, records, documents and other evidence directly pertinent to the performance of this Contract in accordance with generally accepted accounting principles and practices consistently applied. (The foregoing constitutes "records" for purposes of this Contract)

12.2 In accordance with WSSC Code of Regulations, Title 6, Chapter 6.15.450, the CONSULTANT'S facilities and plants, or such part thereof as may be engaged in the performance of this Contract, and records shall be subject at all reasonable times to audit, examination, inspection or reproduction by the COMMISSION, the State of Maryland, or any of their authorized representatives.

12.3 The CONSULTANT shall preserve and make available its records until the expiration of five (5) years after the Contract expiration date or after the acceptance of Work, whichever is last, or by other provisions of this Contract, or by (1) or (2) as follows:

12.3.1 If the Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any resulting final settlement.

12.3.2 Records which relate to appeals or disputes, litigation, or settlement of claims arising out of the performance of this Contract shall be retained until final disposition of such appeals, litigation, or claims.

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

ARTICLE 13. SUSPENSION OF SERVICES

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

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

ARTICLE 14. INTERPRETATION

14.1 In the interest of brevity, this Contract frequently omits modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The term "days" as used in this Contract shall mean calendar days as defined by with WSSC Code of Regulations, Title 6, Chapter 6.15.070(u). The headings contained in this Contract are inserted only for ease of reference and are not meant to and shall not define, limit, or in any way affect the terms and provisions set forth therein. Each of the parties acknowledges that this is a fair Contract and is not the result of fraud, duress or undue influence exercised upon it by any person or entity. Each party acknowledges that it has read this Contract, has participated in its negotiation, understands its contents, and has had the opportunity to obtain the assistance of legal counsel of its choice.

ARTICLE 15. ASSIGNMENT

15.1 This Agreement is binding on the heirs, successors, and assigns of the parties hereto. In accordance with WSSC Code of Regulations, Title 6, Chapter 6.15.240(a) this Agreement is not assignable without the written consent of the Chief Procurement Officer.

ARTICLE 16. SEVERABILITY

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

ARTICLE 17. NO THIRD PARTY RIGHTS

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

ARTICLE 18. FORCE MAJEURE

27.1 18.1 Neither party shall be considered in default in the performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered or prevented by any cause which is beyond the reasonable control of such party (hereinafter called "Force Majeure"). Force Majeure includes but is not limited to any of the following if reasonably beyond the control of the party claiming Force Majeure: war (declared or undeclared), blockages, hostilities, revolutions, riots, strikes, lockouts or other labor disturbances, epidemics, fires, storms, delays or interruptions in transportation, or any laws, regulations or ordinances of any government, governmental agency or court having or claiming to have jurisdiction over any part of the services, including laws, regulations or ordinance pertaining to the protection of the environment, or obtaining permits required by any such government, governmental agency or court, or any other cause (whether or not of kinds specifically mentioned herein) that is not reasonably within the control of the party claiming Force Majeure. In accordance with WSSC Code of Regulations, Title 6, Chapter 6.15.560(b), the CONSULTANT shall file with designated Contract Administrator any

claims that arise from a Force Majeure event.

ARTICLE 19. BRIBES

19.1 A bribe or attempt to bribe any employee or officer of the COMMISSION by the CONSULTANT shall be considered a fraudulent and bad faith act, and shall thus empower the COMMISSION to invoke its rights and the Contract may be declared null and void pursuant to WSSC Code of Regulations, Title 6, Chapter 6.15.550.

ARTICLE 20. COVENANT AGAINST CONTINGENCY FEES

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

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

ARTICLE 21. SUBCONTRACTING

21.1 The CONSULTANT shall not award work to sub-consultants in excess of 49 percent of the Contract value.

21.2 The CONSULTANT shall report the use of subcontractors, manufacturers, and suppliers during the course of the Contract as set forth in the Contract Documents.

21.3 The CONSULTANT shall be fully responsible to the COMMISSION for the acts and omissions of the CONSULTANT'S 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.

21.4 The CONSULTANT shall be fully responsible for the coordination of the work of the trades, subcontractors, manufacturers and suppliers, and their officers, agents, and employees.

21.5 The CONSULTANT shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bond subcontractors to the CONSULTANT by the terms of the Contract Documents insofar as applicable to the Work of subcontractors and to give the CONSULTANT the same power as regards terminating any subcontract that the COMMISSION may exercise over the CONSULTANT under any provision of the Contract Documents.

21.6 Nothing contained in the Contract Documents shall create any contractual arrangement between any subcontractor and the COMMISSION.

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

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

21.9 Failure to comply with the requirements herein will be considered in the evaluation of the

CONSULTANT'S responsibility in performing future contracts.

21.10 No additional compensation will be allowed for meeting the requirements of this section.

Questions concerning WSSC's Web-Based Compliance System shall be directed to the SLMBE Office at 301-206-8800 or email at wsscwebcompliance@wsscwater.com.

ARTICLE 22. INDEMNIFICATION AGREEMENTS

22.1 GENERAL LIABILITY: The CONSULTANT shall defend, indemnify and save harmless the COMMISSION from any and all suits, claims, actions, damages or costs of every name and description, including reasonable attorney's fees to which the COMMISSION may be subject, including but not limited to any suit, claim, or action alleging injury to persons (bodily injury, including death, or any personal injury) or property damage as a result of the Work, caused or alleged to be caused by the negligence or willful acts of misconduct on the part of the CONSULTANT, their servants or agents, (other than arising out of CONSULTANT'S professional services). Monies to become due the CONSULTANT under the Contract as may be considered necessary by the COMMISSION shall be retained by the COMMISSION until such suits or claims for damages shall have been settled or until the CONSULTANT furnishes to the COMMISSION satisfactory evidence of insurance coverage with respect to such suits or claims or post a bond in the amount of the dispute in a form satisfactory to the COMMISSION.

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

22.3 Monies due or to become due the CONSULTANT under the Contract as may be considered necessary by the COMMISSION shall be retained by the COMMISSION until such suits or claims for damages shall have been settled or otherwise disposed of or satisfactory evidence to that effect has been furnished to the COMMISSION.

ARTICLE 23. OWNERSHIP RIGHTS

23.1 The CONSULTANT shall vest in the COMMISSION title to all computer programs, reports, exhibits, calculations, program modifications, parameters, coding or any other products of work produced or delivered to the COMMISSION hereunder in the performance of this Contract and this material shall be the sole property of the COMMISSION and 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. The Offeror(s) agrees neither to assert any rights at common law or equity nor to assert or establish any claim to statutory copyright or ownership in such reports.

ARTICLE 24 INTELLECTUAL PROPERTY COPYRIGHT

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

to affect such transfer or assignment.

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

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

24.4 Notwithstanding any other provision of this Contract, each party is and shall continue to be the sole and exclusive owner of all data, materials, documentation and intellectual property rights that such party owned, created, conceived or developed prior to the date of this Contract.

ARTICLE 25. DISSEMINATION OF INFORMATION

1.1 The CONSULTANT shall 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

1.2 The CONSULTANT shall indemnify and hold harmless the COMMISSION, its officers, agents, and employees, from any and all liability which may be incurred by reason of dissemination, publication, distribution, or circulation, in any manner whatsoever, of any information, data, documents, or materials pertaining in any way to this Contract by the CONSULTANT, his agents or employees.

1.3 The CONSULTANT shall hold all materials and information belonging to the COMMISSION or the COMMISSION's agents in strictest confidence and not to make use thereof other than for the performance of contractual obligations, to release it to or disclose it to any other party. Any information of a restricted nature provided to the CONSULTANT by the Project/Contract Manager or designee in the course of Contract implementation shall be handled in accordance with restrictions placed thereon by the Project/Contract Manager. Information or documents given to, or generated by, the CONSULTANT in the course of contract implementation shall be considered restricted information and subject to handling and dissemination restrictions as specified herein and/or as specified by the Project/Contract Manager

ARTICLE 26. PATENTED DEVICES, MATERIALS AND PROCESSES

26.1 All claims by a CONSULTANT against WSSC which includes without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission shall be resolved in accordance with WSSC Code of Regulations, Title 6, Chapter 6.15.560(b).

26.2 The CONSULTANT shall diligently carry on the Work and maintain the progress schedule during any dispute, appeal, or court proceeding arising from or related to a Claim.

26.3 No claim by the CONSULTANT shall be allowed if asserted after final payment under this Contract.

ARTICLE 27 CONTRACT DISPUTE RESOLUTION

27.2 All claims by a CONSULTANT against WSSC which includes without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission shall be resolved in accordance with WSSC Code of Regulations, Title 6, Chapter 6.15.560(b).

27.3 The CONSULTANT shall diligently carry on the Work and maintain the progress schedule during any dispute, appeal, or court proceeding arising from or related to a Claim.

27.4 No claim by the CONSULTANT shall be allowed if asserted after final payment under this Contract

ARTICLE 28. CONFLICT OF INTEREST

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

ARTICLE 29. DELAY OF WORK

29.1 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 cause, including the fault or negligence of the CONSULTANT, or for which an adjustment is provided or excluded under any other provision of this Contract.

29.2 A delay claim shall be filed according to WSSC Code of Regulations, Title 6, Chapter 6.15.560(b).

ARTICLE 30. WARRANTY FOR PROFESSIONAL SERVICES

30.1 The CONSULTANT acknowledges that he is aware that the professional services provided herein are furnished to the COMMISSION with the understanding that the COMMISSION, in accepting these services, relies upon the CONSULTANT's particular skill and expertise. Accordingly, the CONSULTANT warrants that the professional services provided are of a professional quality and that such services meet or exceed the prevailing practices and standards of the trade from which the services are provided.

30.2 Both parties also recognize that the COMMISSION may implicitly suspend the Work by reasonable delays in its review, comment and action on the submitted data, plans, reports and other documents transmitted to the COMMISSION, for which there shall be no additional compensation.

ARTICLE 31. MARYLAND LAW

31.1 The CONSULTANT agrees to obtain and maintain in good standing all corporate filings, licenses, and approvals, as required by Maryland law.

31.2 This Contract shall be construed and enforced in accordance with, and governed by, the laws of the State of Maryland.

ARTICLE 32. PUNITIVE DAMAGES

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

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

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

ARTICLE 34. SMOKING

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

ARTICLE 35. LEGAL ADDRESS

35.1 The address given in the Proposal shall be the legal address of the CONSULTANT. Changes to the

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

ARTICLE 36. SECURITY

36.1 The CONSULTANT's employees shall be issued photo identification cards. Identification cards must be worn at all times while on any COMMISSION property. CONSULTANT employees found on-site without proper identification will be immediately removed from COMMISSION property. Identification cards for employees who are no longer associated with the project, for any reason, will be immediately recovered by the CONSULTANT and returned to the Project/Contract Manager. The CONSULTANT is responsible to control and inventory all identification cards issued so that cards are not obtained or used by unauthorized individuals. All cards must be returned to the Project/Contract Manager at the conclusion of this Contract.

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

ARTICLE 37. AUTHORIZATION

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

ARTICLE 38. CONFIDENTIALITY

38.1 The CONSULTANT and its employees agree that all findings, memoranda, correspondence documents or records of any type, whether written, electronic, or oral and all documents generated by the CONSULTANT its 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/Contract Manager, or assignee, and the Contract Administrator or assignee. The CONSULTANT and his employees agree that all oral or written inquiries regarding the status of any Records shall be referred to the Project/Contract Manager or assignee. The Offeror agrees to include the provisions of this Article 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 Article. The covenants set forth in this Article shall survive this Contract and shall remain in effect in perpetuity.

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

39.1 In accordance with WSSC Code of Regulations, Title 6, Chapter 6.15.410(d)(2), WSSC may find it advantageous to obtain the option of a unilateral contract extension to extend the Contract ninety (90) days past its termination date. If WSSC intends to exercise the extension, it shall provide written notice to the CONSULTANT at least thirty (30) days prior to the Contract termination

date. The exercise of the 90-day option is at WSSC's sole discretion.

ARTICLE 40. PROCUREMENT REGULATIONS

40.1 This Contract shall be construed and enforced in accordance with, and governed by, the Procurement Regulations, WSSC Code of Regulations, Title 6, Chapter 6.15. The Procurement Regulations can be viewed https://wssc.district.codes/Code/6.15.

ARTICLE 41. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

41.1 The acceptance by the CONSULTANT of final payment shall constitute a release to the COMMISSION from any and all claims of any nature and all liability to the CONSULTANT, for all things done or furnished in connection with the Work, and for every act and neglect of the COMMISSION and others relating to or arising out of this Work.

ARTICLE 42. ETHICS

42.1 Personnel of the Commission and the CONSULTANT and its personnel and agents shall comply with the Commission's Code of Ethics, WSSC Code of Regulations, Title 1, Chapter 1.70.

42.2 In accordance with WSSC Code of Regulations, Title 1, Chapter 1.70.190, a former Commissioner or employee may not act as an agent or representative of any person or entity involved in a business transaction with WSSC for a period of 12 months from the date of the former employee's separation from the Commission. In addition, a former Commission employee is barred from assisting or representing a party in a business transaction with WSSC if the former employee participated significantly in the matter as an employee.

ARTICLE 43. SEXUAL HARASSMENT

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

ARTICLE 44. DEBARMENT AND SUSPENSION

44.1 Debarment and suspension actions taken against a CONSULTANT will be done in accordance with WSSC Code of Regulations, Title 6, Chapter 6.15.540.

ARTICLE 45. NONDISCRIMINATION POLICY

45.1 It is the policy of the COMMISSION to require that individuals and entities with whom it has a contract and their subcontractors, not discriminate against employees or applicants for employment.

45.2 The CONSULTANT shall not discriminate in any manner against an employee or an applicant for employment on the basis of sex, race, creed, color, age, mental or physical disability, sexual orientation, religion, marital status, gender identity or national origin.

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

45.4 If the CONSULTANT fails to include a similar nondiscrimination clause in a subcontract, the Commission shall provide the Contractor a reasonable opportunity to cure the defect. If the CONSULTANT fails to cure the defect within the time period granted, the Commission may

declare the Contract void and the CONSULTANT shall be entitled to the reasonable value of Work that has been performed and materials that have been provided to date. If the CONSULTANT cures the defect, the Contract shall remain in force according to its revised terms.

45.5 If the CONSULTANT willfully fails to comply with the requirements of this nondiscrimination clause, the Commission may compel the CONSULTANT to continue to perform under the Contract as provided in Maryland Annotated Code, Public Utilities, § 17-402.1(b).

ARTICLE 46. ENTIRE CONTRACT

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

ARTICLE 47. PAYMENT

47.1 Payment will be made by Automated Clearing House (ACH) or by WSSC's Procurement Credit Card for the total number of deliverables within 30 days after the services have been provided and accepted by the COMMISSION.

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

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

Washington Suburban Sanitary Commission

Finance/Disbursements

Group 14501 Sweitzer Lane,

11th Floor Laurel, Maryland

20707-5902

ARTICLE 48. CONSULTANT PERFORMANCE EVALUATION

48.1 The purpose of the CONSULTANT Performance Evaluation is to:

48.1.1 Identify and document the CONSULTANT's ability to meet all Contract compliance requirements.

48.1.2 Communicate Contract compliance problems to the CONSULTANT in a timely manner.

48.1.3 Provide corrective action as early as possible during the Contract Work, so that the Work may be successfully completed in accordance to all Contract requirements.

48.2 Consultant Performance Evaluation Schedule

48.2.1 Contracts equal to or greater than $25,000 shall be evaluated, at a minimum, at the conclusion of the work.

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

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

48.3 Contract Startup

48.3.1 Prior to the start of the contract, the Contract Manager shall review the Evaluation Factors

with the CONSULTANT.

48.3.2 Documentation of the meeting shall be provided to the CONSULTANT and to the Procurement Office, and shall be incorporated into the Contract file.

48.4 CONSULTANT Performance Evaluation

48.4.1 The Contract Manager shall complete a CONSULTANT Performance Evaluation in accordance to Consultant Performance Evaluation Schedule using the CONSULTANT Performance Evaluation (CPE) form.

48.4.2 The Contract Manager shall attach documentation that supports the results of the Consultant Performance Evaluation and which at a minimum includes:

48.4.2.1 Prior CPE documents

48.4.2.2 The most recent SLMBE subcontracting report

48.4.2.3 Cure Letters and/or Show Cause Letters

48.4.2.4 Test Results and/or Inspection Results

48.4.2.5 Correspondence between WSSC and the CONSULTANT

48.4.2.6 Minutes of any meetings relevant to contract compliance.

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

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

48.5 Consultant Performance Evaluation Meeting

48.5.1 Consultant Performance Evaluation Meetings shall be conducted if:

48.5.1.1 The CONSULTANT receives a Marginal or Unsatisfactory evaluation,

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

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

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

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

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

48.5.5 During the meeting, the Contract Manager

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

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

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

48.5.6 After the meeting,

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

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

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

ARTICLE 49. PERSONAL INFORMATION PROTECTION

49.1 The COMMISSION may disclose "Personal information" to CONSULTANT as defined in § 10-1301 of the State Government Article of the Annotated Code of Maryland.

49.2 In accordance with the requirements of § 10-1304 of the State Government Article, the

CONSULTANT shall implement and maintain reasonable security procedures and practices that:

(i) are appropriate to the nature of the personal information disclosed to it, and

(ii) are reasonably designed to help protect personal information from unauthorized access, use, modification, disclosure, or destruction

49.3 Upon reasonable advance notice, and without creating an obligation to do so, the COMMISSION shall have the right to verify and audit the security procedures and practices implemented and maintained by CONSULTANT for this purpose. CONSULTANT shall remain solely responsible for its security procedures and practices.