



INVITATION FOR BID (IFB)

IFB No: FQ16005/WJG

WASHINGTON METROPOLITAN AREA

TRANSIT AUTHORITY

STRUCTURAL RETROFIT OF BEAM B9

FARRAGUT NORTH METRORAIL STATION (A02)

DATE: OCTOBER 23, 2015

VOLUME 1

PROCUREMENT AND CONTRACTING REQUIREMENTS

GENERAL REQUIREMENTS


WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION CERTIFICATION PAGE

FQ16005

STRUCTURAL RETROFIT OF B9 BEAM AT FARRAGUT NORTH METRORAIL STATION


APPROVE FOR RELEASE



RICHARD P. SMITH
PROJECT MANAGER

10/06/15


DATE



RICHARD OWENS
CONTRACTING OFFICER

10/16/15

DATE



OFFICE OF GENERAL COUNSEL
* Approved as revised 10-21-15

10/21/15

DATE

END OF SECTION

Section 00005

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Section 00100

INVITATION FOR BID

This Section includes Project information for Bidders.

Notice to Bidders

Contract No. FQ16005 includes IFB Documents for:

Structural Retrofit of B9 Beam at Farragut North Metrorail Station

Bid for the Work described herein shall be submitted before 2:00 PM (Local time) on November 18, 2015

Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
Solicitation No.: FQ16005/WJG

Questions may be directed to William J. Geroux, Contract Administrator, telephone: (202) 962-2467; email: wgeroux@wmata.com See Section 00200, INSTRUCTIONS FOR BIDDERS, for Bid submittal instructions.

DIRECTIONS TO SUBMITTING BIDDER: Read and comply with the Invitation Instructions. In addition to other submission requirements set forth in this Invitation for Bid and all Amendments, the following must be properly executed, completed, and submitted as part of the Bid:

- A. BID:
 - 1. Bid Price Form (properly executed)
 - 2. Bid Price Schedule
 - 3. Bid Guarantee
 - 4. Bid Data Form with Supporting Data
 - 5. Representations and Certifications
 - 6. List of DBE Certified Firms
 - 7. DBE Data

BID(S) MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS INVITATION FOR BID, INCLUDING ALL AMENDMENTS.

00101 GENERAL STATEMENT OF WORK

- A. The Contractor shall furnish all labor, materials, equipment, incidentals, and other items necessary to complete the Structural Retrofit of B9 Beam at Farragut North Metrorail Station as required by the Contract documents.

- B. The Project shall function as an integral part of and fully compatible with the existing WMATA system.
- C. It is the responsibility of the Contractor to gather all data necessary for the performance of the Work under this Contract that are needed in addition to Authority-furnished IFB Documents.
- D. Award of the contract will be based on the lowest responsive and responsible bid.
- E. All work under this Contract shall be performed in a logical sequence as developed by the Contractor.

00102 GENERAL SCOPE OF WORK

- A. Gather all data necessary for the performance of the Work under this Contract that are needed in addition to Authority-furnished Contract Documents.
- B. Perform all work in strict accordance with the manufacturers' recommendations and the sequence of construction approved by the Contracting Officer Representative (COR).
- C. If existing construction suspected of containing hazardous materials is encountered, do not disturb hazardous materials and immediately notify the COR. Hazardous materials will be removed by the Authority under a separate contract.
- D. Protect adjacent area and adjacent occupied areas. Provide required barriers to seal off hazardous materials from the adjacent areas.
- E. Remove from the Authority's property all debris resulting from demolition to locations off the Authority's property and obtain written permits and release from the owners of the property where the materials will be deposited. This includes demolition and removal of all existing concrete, accessories and appurtenances shown on Contract drawings. Contractor is responsible for all offloading of materials from WMATA rail vehicles at rail yard and transporting off WMATA property.
- F. At A02 Farragut North Metrorail Station, Beam B9, one of a series of cast-in-place (CIP) post tensioned (PT) beams above the Farragut North Station platform, is situated under the intersection of Connecticut Avenue and L Street and in close proximity to the Northwest Station Entrance. The beam supports approximately 15' of overburden and was configured to accommodate large diameter utilities within L Street. Beam B9, lying at a 66° skew to track alignment has a clear span of approximately 76 feet. The retrofit will consist of a permanent support installed at the mid-span of Beam B9. This support shall be structural steel columns with exterior cladding supported on concrete pedestals anchored on the station invert. Columns shall be preloaded using a controlled jacking procedure.

- G. The retrofit work will commence such that there are minimal impacts to station operations both during construction and once work is complete. Work elements shall include reconfiguration of an air return at the base of a typical station platform granite bench, temporary replacement or protection of an air distribution pylon, removal and reinstallation of metal pan ceiling and support structure, and relocation of electrical/communication conduits as needed. Sections of the platform floor tile and floor slab will require demolition and restoration to install the cast in place reinforced concrete pedestals which comprise the bases of the new steel columns.
- H. Repair/retrofit the existing WMATA structures as shown on the drawings. For description of work, applicable references, required submittals, quality assurance, materials, execution, see project specifications in addition to this section.
- I. For details of existing structure, see reference drawings; WMATA, section a-3, Connecticut avenue route, June 1970 approved for construction June 17, 1970.
- J. All applicable dimensions, locations, clearances and elevations of existing structures shown on the drawings and in the reference drawings shall be verified by the contractor in the field prior to preparation of shop drawings and commencement of any work. If discrepancies are discovered between existing conditions and the contract work, the contractor shall immediately notify the COR.

00103 PROJECT BID SCHEDULE

- A. The Bid schedule for this Project is as follows:
 - 1. Issue Invitation for Bid: October 23, 2015
 - 2. Pre-Bid Conference: November 4, 2015 @ 3:30 PM [Site Visit to follow]
 - 3. Bid Due/Opening: November 18, 2015
 - 4. Projected Contract Award: NLT December 31, 2015

END OF SECTION

Section 00200

INSTRUCTION TO BIDDERS

This Section includes procedures with which Bidders must comply and conditions affecting award of the Contract.

00201 GENERAL INSTRUCTIONS

A. Definitions as used herein:

1. The term "Invitation" used in this document means this Invitation for Bid (IFB)
2. The term "Bid" used in this document means a response to this Invitation
3. For further explanation of Contract terms, refer to Section 00701, DEFINITIONS, of this General Conditions

B. Method of Procurement:

1. This is a low bid procurement.

C. Basis for Award:

1. Award will be made to that Bidder:
 - a. who is the lowest responsive and responsible bidder based on price as identified in Section 00203, BID PROCEDURES, EVALUATION FACTORS, AND INSTRUCTIONS, and
2. The Authority will make a single award to one Bidder as the result of this Invitation. See Notes to Bidders in Section 00434, BID PRICE SCHEDULE, for further award information.
3. A written award of acceptance of Bid mailed or otherwise furnished by the Authority to the successful Bidder within the specified Acceptance Period shall result in a binding contract without further action by either party.

D. Type of Contract: The Authority contemplates award of a Firm Fixed Price contract.

E. Invitation for Bid (IFB) Documents:

1. IFB Documents are available on the Authority's website at:
http://www.wmata.com/business/procurement_and_contracting/solicitations/index.cfm
IFB Documents are posted in Adobe Acrobat (pdf) format. The IFB can be downloaded free of charge.

F. Preparation of Bids:

1. The Bidder shall complete the Bid Forms furnished in Section 00400, BID FORMS AND SUPPLEMENTS, or copies thereof, and submit them according to the instructions given in this

IFB. If erasures or other changes appear on the forms, they must be initialed by the person signing the Bid.

2. Each Bidder shall furnish the information required by the Invitation. Bidders are expected to examine the IFB Documents. Failure to do so will be at the Bidder's risk.

G. Explanation to Bidders:

1. All explanations desired by a Bidder regarding the meaning or the interpretation of this IFB or all other Bid documents must be requested in writing 14 Days prior to the date set for receipt of Bids to allow sufficient time for a reply to reach all Bidders before the submittal of their Bids. These requests shall be forwarded to the Contract Administrator at wgeroux@wmata.com. Oral explanations or instructions given before the award of the Contract will not be binding. Any information given to a prospective Bidder concerning the Invitation will be furnished promptly to all prospective Bidders as an Amendment to this IFB, if the information is necessary in submitting Bids or if lack of such information would be prejudicial to other prospective Bidders.
2. The Authority reserves the right to amend the IFB prior to the date set for receipt of Bids. If any amendments are issued, they will be posted on the WMATA website along with the solicitation.
3. If, in the judgment of the Authority, the revisions under Amendments would require material changes in the Bids, the date set for the receipt of Bids may be postponed by such number of Days as in the opinion of the Authority will enable Bidders to revise their Bids. In such cases, the Amendment will include an announcement of the new date for the receipt of Bids.

H. Acknowledgment of Amendments:

1. Bidders are required to acknowledge receipt of all Amendments to this Invitation on copies of the Bid Forms and 00413, BID FORM, in the space provided. Failure to acknowledge all Amendments may cause the Bid to be considered non responsive to the Invitation, which would require rejection of the Bid.
2. If this Invitation is amended, all terms and conditions, which are not modified, remain unchanged.

I. Submission/Withdrawal of Bids:

1. Bids and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. The Bidder shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the Bidder on the face of the envelope.
2. Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt.

3. Facsimile Bids, modifications or withdrawals will not be considered unless authorized by the Authority.

J. Late Bids or Withdrawals:

1. Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it
 - (a) Was sent by registered or certified U.S. mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been sent by registered mail by the 15th); or
 - (b) Was sent by U.S. mail or a recognized commercial carrier, and it is determined by the Authority that the late receipt was due solely to mishandling by the Authority after receipt; or
 - (c) Was sent by U.S. Postal Service Express Mail Next Day Service Post Office or similar express service from a recognized commercial carrier to Addressee, no later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of bids. The term "working days" excludes weekends and U.S. Federal holidays.
2. Any modification of a bid, is subject to the same conditions as in subparagraphs (1)(a), (b), and (c) of this provision.
3. The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by registered or certified mail is the U.S. or Canadian Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.
4. The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the Authority.
5. The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph d. of this provision, excluding postmarks of the Canadian Postal Service.

Therefore, bidders or bidders should request the postal clerk to place a legible hand cancellation bulls-eye postmark on both the receipt and the envelope or wrapper.

6. Notwithstanding paragraph "A" above, a late modification of any otherwise successful bid that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.
7. A Bid may be withdrawn by written notice received by the Authority before the opening of Bids. Bids may be withdrawn in person by a Bidder or its authorized representative if, before the exact time set for receipt of Bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the Bid.

K. Bid Mistake

1. A Bidder who seeks to withdraw its Bid subsequent to Bid opening due to claimed mistake or error in preparation shall notify the Authority in writing immediately upon realizing the mistake and in no event later than 30 Days following Bid opening, setting forth the details of, and explanation for, the claimed mistake. The Authority shall evaluate the claimed mistake and determine whether the Bidder will be permitted to withdraw its Bid.
2. A Bidder claiming a mistake shall, if so requested by the Contracting Officer, appear before one or more designated representative(s) of the Authority to provide testimony and/or documentation, which may include the Bidder's computation sheets and calculations, to assist in the Authority's determination.
3. Nothing contained herein shall be deemed to preclude the Authority from allowing a Bidder to cure a deficiency in an otherwise responsive Bid where the Authority determines that such deficiency is in the nature of a minor informality or irregularity.

L. Bid Guarantee:

1. A Bid guarantee is required by the Invitation to Bid. Failure to furnish a Bid guarantee in the proper form and amount, by the time set for the receipt of Bids, may be cause for rejection of the Bid. Bid guarantee shall be sealed, marked, and submitted in an envelope by the Bidder and received at the Office of Procurement, Washington Metropolitan Area Transit Authority, 600 Fifth Street, N.W., Washington DC 20001 by the specified closing time on the date of closing.
2. A Bid guarantee shall be in the form of a firm commitment, such as a Bid bond (see Section 00431, BID SECURITY (Bid Bond Form)), postal money order, certified check, cashier's check, irrevocable letter of credit from a State or Federally chartered bank or, in accordance with Treasury Department regulations, or certain bonds or notes of the United States. Corporations executing the Bid bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Bid guarantees, other than Bid bonds, will be returned as follows:

- a. To unsuccessful Bidders: As soon as practicable after the receipts of Bids.
- b. To the successful Bidder:
 - i. Upon execution of such further contractual documents and bonds as may be required by the Bid accepted.
 - ii. If the successful Bidder, upon acceptance of its Bid by the Authority within the Acceptance Period, fails to execute such further Bid guarantees and give such bond(s) as may be required by the terms of the Contract, its Contract may be terminated for default. In such event, the successful Bidder shall be liable for any cost of procuring the Work, which exceeds the amount of its Bid, and the Bid guarantee shall be available toward offsetting such difference.

M. Minimum Bid Acceptance Period:

1. Acceptance Period, as used in this Section, means the number of Days available to the Authority for awarding a contract from the most current date specified in this Invitation for receipt of Bids.
2. The Authority requires an Acceptance Period of One-Hundred Twenty (120) Days from the due date of the Bid.

N. Contract and Bonds: The Bidder whose Bid is accepted shall, within the time established in this Invitation, enter into a written contract with the Authority and furnish performance and payment bonds on standard Authority forms in the amounts indicated in Section 00600, BONDS AND CERTIFICATES.

O. Conditions Affecting the Work:

1. Bidders are required to visit the Project Site to examine the general and local conditions, which can affect the Work or the cost thereof. See Section 00250, PRE-BID MEETINGS SCHEDULE, for further details.
2. As discussed in Section 00310, EXISTING CONDITIONS, Bidders may examine records of all original borings, test excavations, and other subsurface investigations and existing utilities and environmental investigations, if any, made for the Authority prior to the construction of the Project.

P. Opportunity for Disadvantaged Business Enterprises to Bid:

1. The Washington Metropolitan Area Transit Authority hereby notifies all Bidders that the Bidder shall ensure that in regard to any contract entered into pursuant to this Invitation, disadvantaged business enterprises will be afforded full opportunity to submit Bids in response to this Invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for award.

Q. Disadvantaged Business Enterprises: (See Section 00453, DBE DATA)

1. It is the policy of the Authority (WMATA) that Disadvantaged Business Enterprises (DBEs) shall have an equal opportunity to receive and participate in performing WMATA contracts, including contracts and subcontracts at any tier, and of the Federal Transit Administration (FTA) and the U.S. Department of Transportation (US DOT) in receiving and participating in federally assisted contracts. The DBE requirements, if any, are set for in Section 00453, DBE DATA, and in Section 00788, FEDERAL REGULATIONS AND CLAUSES, Paragraph Q, Disadvantaged Business Enterprises (DBE), to this Invitation, and are applicable if the Bid is \$500,000 or more for construction (and construction-related) contracts and for supply and service contracts having a total dollar value of \$100,000 or greater. The DBE goal percentages, if applicable, are listed in Section 00888, FEDERAL REGULATIONS AND CLAUSES, Paragraph Q, and Disadvantaged Business Enterprises (DBE).
2. If the Bidder is not a DBE, then the DBE goal set forth in Section 00888, FEDERAL REGULATIONS AND CLAUSES, Paragraph Q, Disadvantaged Business Enterprises (DBE), if any, shall be met by Subcontractors or joint ventures with DBEs.
3. If a DBE goal is specified in Section 00888, FEDERAL REGULATIONS AND CLAUSES, Paragraph Q, Disadvantaged Business Enterprises (DBE), the Bidder shall submit with its Bid a list of WMATA-certified DBE firms that it intends to enter into subcontract agreements with for this Contract. The documentation requirements of Section 00453, DBE DATA, shall be completed and submitted at the time of Bid. Also, if no goal is specified in Section 00888, FEDERAL REGULATIONS AND CLAUSES, Paragraph Q, Disadvantage Business Enterprises (DBE), but the Bidder still intends to utilize DBEs in the performance of this Contract, the Bidder shall submit with its Bid a list of those WMATA-certified DBE firms. Bidders who fail to complete and return this information, if applicable, with their Bid, will be deemed to be non-responsive and will be ineligible for contract award. The documentation requirements, if applicable, are as follows:
 - a. SCHEDULE OF DBE PARTICIPATION and executed LETTER(s) OF INTENT TO PERFORM AS A SUBCONTRACTOR/JOINT VENTURE with agreed price sufficient to meet the DBE goal set forth in Section 00888, FEDERAL REGULATIONS AND CLAUSES, Paragraph Q, Disadvantaged Business Enterprises (DBE); or
 - b. A request for waiver of the DBE goal or portion of the goal, if any, and reasons therefore as stipulated in Paragraph F.3 of Section 00453, DBE DATA. Request must be made on company stationery and signed by the responsible official.
4. Bidders that fail to meet the DBE goal set forth in Section 00888, FEDERAL REGULATIONS AND CLAUSES, Paragraph Q, Disadvantaged Business Enterprises (DBE), if any, and fail to demonstrate "good faith efforts" to justify waiver of the DBE goal, if any, may be deemed to be non-responsive and will be ineligible for contract award.
5. In connection with the performance of this Contract, the Contractor agrees to cooperate with the Authority in meeting its commitments and goals with regard to the maximum utilization of Disadvantage Business Enterprises (DBE), and further agrees to exert good faith efforts to satisfy the requirements of Section 00453, DBE DATA, if applicable, by subcontracting

- portions of the Work to disadvantaged firms, by entering into joint ventures with disadvantaged firms, or both.
6. If there is not goal in this Contract, DBE participation is encouraged and pursuant to the Authority's race-neutral program, is anticipated to be as specified in Section 00788, FEDERAL REGULATIONS AND CLAUSES, Paragraph Q, Disadvantaged Business Enterprises (DBE).
- R. Civil Rights: The Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations of Section 00788, FEDERAL REGULATIONS AND CLAUSES, Paragraph P, Civil Rights Requirements.
- S. Debarred or Ineligible Bidders: All Bidders will be required to certify that they are not on any list of ineligible or debarred contractors (see Section 00451, REPRESENTATIONS AND CERTIFICATIONS FORM).
- T. Notice of Protest Policy:
1. WMATA policy and procedure for the administrative resolution of protests is set forth in Chapter 17 of the Procurement and Procedures Manual (PPM). The PPM contains strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters. The Contracting Officer can furnish a copy of Chapter 17 upon request.
 2. FTA Circular C 4220.1F, paragraph 7.I addresses Bid Protests. Review of protests by FTA is discretionary and will be limited to:
 - a. A grantee's failure to follow its protest procedures or its failure to review a complaint or protest; or
 - b. Violations of Federal law or regulation.
 3. A protester must exhaust all administrative remedies with the Authority before filing an appeal to the FTA. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within 5 working days of the date the protester learned or should have learned of an adverse decision by the Authority or other basis of appeal to FTA.
 4. Alleged violations on other grounds must be submitted to the Contracting Officer who will decide to the protest.
 5. The judicial authorities having jurisdiction over court actions concerning protest decisions are the United States District Courts for the Districts of Maryland, Virginia, and the District of Columbia, and the local courts in Maryland, Virginia, and the District of Columbia.
- U. Requirements for Cost Data Prior to Contract Award: The Authority had determined that certified cost or pricing data are not required for this Invitation based on the anticipation of adequate price competition. If after receipt of Bids the Authority determines that adequate price competition no longer exists, the Authority will require the Bidder(s) to submit cost data in sufficient detail to permit analysis of the cost elements which make up the proposed price(s).

The preparation, submittal, and certification of Certified Cost or Pricing Data shall be as described by FAR 15.4 and in Section 00700, GENERAL CONDITIONS.

- V. Davis-Bacon Wage Determination Decision: The Authority's Compact requires that all mechanics and laborers employed by Contractor or Subcontractors on construction and maintenance contracts be paid wages not less than those prevailing on similar contracts in this locality as determined by the Secretary of Labor in accordance with Section 00767, DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS. The Wage Determination Decision of the Secretary of Labor is referred to in Section 00767, DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS, and attached as APPENDIX D in Section 00800, SUPPLEMENTARY CONDITIONS.
- W. WMAA's Tax Exempt Status:
1. Pursuant to Article XVI, Paragraph 78, of the Washington Area Metropolitan Transit Authority Compact, as adopted by the State of Maryland, the District of Columbia, and the Commonwealth of Virginia, with the authorization and consent of the Congress of the United States, the Authority has been accorded exemption from taxes as follows:
 - a. "The Authority and the Board of Directors shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision, or upon its activities in the operation and maintenance of any transit facility or upon any revenues there from, and the property and income derived there from shall be exempted from all Federal, State, District of Columbia, municipal, and local taxation. This exemption shall include without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes."
 2. It has been the practice of the District of Columbia to apply the Authority's tax-exempt status to certain purchases of materials required under Authority construction contracts and acquired by Contractor for physical incorporation into the Work. This has not been the practice in either Maryland or Virginia. The Authority does not represent or warrant that the District of Columbia practice applies to this Project or, if it does, that it will continue in effect during the term of this Project. It is the responsibility of the Contractor to determine its liability for any and all taxes applicable to this Project. Assessment or payment of taxes by the Contractor, including taxes resulting from changes in existing laws or the application thereof or of new or additional taxes, shall not constitute the basis for an increase in the Contract price, except as otherwise allowed under Section 00771, FEDERAL, STATE, AND LOCAL TAXES.
 3. By submission of its bid, the Bidder certifies that none of the taxes to which the Authority is exempt are included in its Bid price(s) or the final Contract Price. In the event that the Authority learns that any taxes to which the Authority is exempt are included in the final Contract Price, the Authority shall be entitled to a reduction in the Contract Price reflecting such amount and a refund of monies paid related to such taxes, plus applicable interest.
- X. Advance Cost Agreement: Within 30 Days after Notice of Award, the Contractor shall make available for audit review, information on its accounting system used to project fixed and variable overhead rates applicable to possible Contract Modifications. The Authority's Office of the Inspector General (OIG), to the extent possible, will review and approve said accounting

system. When appropriate and if possible, as a result of the audit review, Advance Cost Agreements may be executed between the Contracting Officer and the Contractor. The Cost Agreements shall be a supplemental agreement to the Contract.

Y. Proprietary Data in Bids:

1. The Authority will provide all reasonable precautions to ensure that proprietary, technical, and pricing information remains within the review process except where otherwise ordered by an administrative or judicial body or necessary to use in a judicial or administrative proceeding. Bidders shall attach to each page of all proprietary data submitted with the Invitation the following notation:
 - a. "This data furnished pursuant to this IFB shall not be disclosed outside the Authority, be duplicated, or used in whole or in part for any purpose other than to evaluate the bid; provided that, if a contract is awarded on the basis of that bidder, the Authority shall have the right to duplicate, use, and disclose this data, in any manner and for any purpose whatsoever."
2. The Authority's right to use information contained in these data is not limited if the information is or has been obtained by the Authority from another independent legitimate source.
3. Except for the foregoing limitation, the Authority may duplicate, use and disclose in any manner and for any purpose whatsoever and have others so do, all data furnished in response to this Invitation.

- Z. Contract Performance Evaluation: The Bidder is advised that a Performance Evaluation will be completed at the end of the Contract. Factors to be included in the Performance Evaluation are as follows: Quality of Work, Timely Performance, Effectiveness of Management, Compliance with Labor Standards, Compliance with Safety Standards, and an Overall Evaluation. The Performance Evaluation may be used in determinations of responsibility for future WMATA contracts.

00202 BID FORMAT

- A. Bid Page and Character Size: The page size shall not exceed 8-1/2 by 11 inches, except for foldouts, which may not exceed 11 by 17 inches. The page margins shall not be smaller than 1 inch on all four sides. The type size for text shall not be smaller than 10 point, with at least a line spacing of one. The type size for figures and tables shall be not smaller than 8 point.
- B. Elaboration: Legibility, clarity, and completeness are essential. Unnecessarily elaborate brochures or other presentations beyond that sufficient to present a complete and effective Bid are not desired and may be construed as an indication of the Bidder's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual and other presentation aid are neither necessary nor wanted.

- C. **Completeness:** Include all forms and Project-specific information as required in this Section. Include pre-printed literature if directly relevant to this Project. Failure to provide forms or any other information required in the response to this Invitation may cause the Bid to be deemed non-responsive, and the Bid may be subsequently rejected.
- D. **Bid Copies:** Provide one hard copy and one electronic copy (thumb drive).

<u>Volume</u>	<u>Part</u>	<u>Title</u>	<u>Copies</u>
1	A	Price Submission	1
1	B	Forms and Contractual Information	1

00203 BID PRICE PROCEDURES, EVALUATION FACTORS, AND INSTRUCTIONS

- A. **Bid Price Evaluation Factors:**
1. The Authority will evaluate Bid Price for completeness, clarity, conciseness, realism, and responsiveness to the IFB-requested information
 2. Submittal of Bid prices for both the Base and the Options, if any. Failure to do so will necessitate rejection of the Bid.
 3. **Materially unbalanced prices:** Bids that are materially unbalanced as to prices for the various categories of work items may be rejected as non-responsive.
 4. The Authority will compare the Bid Prices to the Authority estimate and otherwise determine reasonableness by performing a price analysis if adequate competition exists. A cost analysis will be performed, if adequate price competition does not exist, to ascertain whether or not the proposed price is fair and reasonable. The Authority may request that Bidders provide a cost breakdown, which identifies major cost drivers and request supporting documentation, such as Supplier and Subcontractor quotes in support of the Bid.
- B. **Bid Price Instructions:** The information provided should be complete and clearly presented. If the information requested under a factor is presented elsewhere in the Bid, the Bidder should cross reference this information that is provided elsewhere rather than duplicate it.
1. Complete, sign, and submit Section 00413, BID FORM. Additionally, submit the following:
 - a. Signed and completed Section 00451, REPRESENTATIONS AND CERTIFICATIONS FORM.
 - b. A completed Section 00434, BID PRICE SCHEDULE, with an amount on each lite item where one is requested and a total amount representing the sum of individual amounts requested.
 - 1) Bid Price Schedule prices shall include all services, labor, material, equipment, overhead, incidentals, and profit, unless otherwise specified.

- 2) In case of a discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject however, to correction to the same extent and in the same manner as any other mistake.
 - 3) Where the Bid Price Schedule explicitly requires the Bidder bid on all items; failure to do so will disqualify the Bid. When submittal of a price on all items is not required, Bidders shall insert the words NO BID in the space provided for an item on which no price is submitted.
 - 4) Bids for construction services other than those specified will not be considered unless authorized by the Invitation. Unless specifically called for, alternate Bids will not be considered.
- c. List of DBE-certified firms that is intends to enter into subcontract agreements with (if a DBE goal is specified in Section 00888, FEDERAL REGULATIONS AND CLAUSES, Paragraph Q, Disadvantaged Business Enterprises (DBE), or if no goal is specified in Section 00888, FEDERAL REGULATIONS AND CLAUSES, Paragraph Q, Disadvantaged Business Enterprises (DBE), but the Bidder still intends to utilize DBEs in the performance of this Contract).
 - d. An executed Bid Guarantee with Surety Certificate (Section 00431, BID SECURITY (BID BOND FORM)). The Bid Guarantee shall be based on the Total Base Bid plus Total Option Price, if any. The Performance and Payment Bonds shall be based on the award amount.
 - e. A signed and completed Section 00452, BID DATA FORM, with attachments.

C. Clarifications:

1. Clarifications. Anytime during the evaluation process of the Bid Prices, the Authority may engage in limited exchanges with the Bidder to request clarifications of any of the points, which are unclear, and to resolve minor or clerical errors. Any such exchange will be for clarification only, and will not constitute Discussions within the meaning of FAR 15.306.

00210 SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

- A. Procedures for Product Substitutions During the Bidding Period – Use of brand names within the technical requirements (as used in this clause, the term “brand name” includes identification of products by make and model in IFB Documents):
 1. If items called for by the IFB Specifications have been identified by a “brand name or equal” description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bidders offering “equal” products including products of the brand name manufacturer other than the one described by brand name, will be considered by the Authority if such products are clearly identified in the Band and are determined by the Authority to meet fully the salient characteristic requirements in the IFB Specification.

2. Unless the Bidder clearly indicates that it is offering an “equal” product by submitting Section 00433, BRAND NAME OR EQUAL FORM, the Bidder shall be considered as offering a brand name products referenced in the IFB Documents.
3. If the Bidder proposes to furnish an “equal” product, the brand name, if any, of the product to be furnished shall be otherwise clearly identified and the determination as to equality of the product offered shall be the responsibility of the Authority and will be based on information reasonably available to the Authority.
4. If the Bidder proposes to modify a product so as to make it conform to the requirements of the IFB Specification, it shall (i) include a clear description of such proposed modifications, and (ii) clearly mark descriptive material to show the proposed modifications.
5. Caution to Bidders: The Authority is not responsible for locating or securing any information, which is not identified and reasonably available to the Authority. Accordingly, to ensure that sufficient information is available, the Bidder must furnish all descriptive material (such as catalogue cuts, illustrations, drawings, or other information) necessary for the Authority to (i) determine whether the product offered meets the salient characteristic requirements of the IFB Specification and (ii) establish exactly what the Bidder proposes to furnish and what the Authority would be binding itself to purchase by approval by the Authority. The information furnished may include specific references to information previously furnished or to information otherwise available to the Authority.

00250 PRE-BID MEETINGS SCHEDULE

- A. Unless otherwise notified, a pre-Bid conference will be held as noted in the Project Bid Schedule, Section 00103, PROJECT BID SCHEDULE. The purpose of this conference will be to answer questions regarding, or requests for clarifications of, the Invitation documents. It is requested that Bidders submit their questions and requests for clarifications of the terms, conditions, and requirements of this Invitation to Bid to the Contracting Officer in writing either in advance of the meeting or during the meeting. Questions from the floor, however, are permissible.
- B. Bidders are required to visit the Site of the Work and inform themselves of all local conditions that may affect the Work or the cost thereof.
- C. The Bidder acknowledges and agrees that it shall be bound by all the terms of the Contract regardless of its attendance at the pre-Bid conference, or the thoroughness of its Site investigation prior to submitting its Bid.

00260 PRE-AWARD MEETING

- A. The Authority requires that a pre-award meeting with the successful Bidder be held prior to the actual award of the Contract. The purpose of the meeting will be to review the successful Bidder’s understanding of the Contract Documents, contractual requirements prior to award, and to confirm the successful Bidder’s capabilities, financial standing, and past experience.

- B. The pre-award meeting will be held in the Washington Metropolitan area and shall be chaired by the Authority and attended by representatives of the Authority, the successful Bidder and its Key Staff nominated for assignment to the Contract, and major Subcontractors if so requested by the Authority. Concerned parties shall each be represented by persons thoroughly familiar with and authorized to conclude matters relating to the Work described in the IFB Documents.
- C. Agenda discussion items for the meeting may include, but are not limited to, the following:
1. Requirements for acceptability of payment and performance bonds.
 2. Requirements for DBE participation.
 3. Requirements for quality assurance/quality control.
 4. Percentage of construction work to be performed by Contractor's forces.
 5. Verification of successful Contractor's experience with similar work, including previous Authority contracts, scheduling capabilities, and financial standing.
 6. Understanding of work described in the IFB Documents and the physical constraints associated with the Work.
 7. Instructions for required submittals due at the Pre-Construction Meeting including:
 - a. Identification of Key Staff
 - b. Organizational Chart
 - c. Subcontractor identifications and qualifications
 - d. Initial Project Management Plan
 - e. Quality Management Plan
 - f. Systems Integration Plan
 - g. Health and Safety Plan
 - h. Temporary Facilities Plan
 - i. Permit and Regulatory Requirements Plan
 - j. 90-Day Schedule with cost loading
 - k. Description of Compliance with Contract Documents
 - l. Execute Contract Agreement
 - m. Power of Attorney Form
 - n. Power of Execution Form
 - o. Performance Bond Form
 - p. Payment Bond Form
 - q. Insurance Certificates, and
 - r. Preliminary Schedule of Required Submittals
- D. Representations and commitments made by the successful Bidder or its Subcontractors will be construed as binding to the Contract and, if not met or deemed to be willfully inaccurate in a material respect, may, in addition to any other rights or remedies of the Authority, be the basis for terminating the Contract for default.

END OF SECTION

Section 00300

INFORMATION AVAILABLE TO BIDDERS

This Section includes information made available to the Bidders.

00301 INVITATION FOR BID (IFB) DOCUMENTS

- A. The IFB Documents, including General Conditions, Supplementary Conditions, General Requirements, Specifications, Drawings, reports, safety and security requirements, and quality requirements of this Invitation FQ16005 as referenced in this Section establish requirements for the construction of the Project. These IFB Documents shall be used by the Bidder to prepare the Bid.

00302 GENERAL CONDITIONS, SUPPLEMENTARY CONDITIONS, AND GENERAL REQUIREMENTS

- A. The General Conditions, Supplementary Conditions, and General Requirements (Division 1 of the Contract Specifications) contain requirements for the administration and construction of the Project.

00303 CONTRACT SPECIFICATIONS

- A. Specifications (Division 2 through 16 of the Contract Specifications) are the parts of the Contract Documents containing written directions or requirements that specify the requirements, which must be fulfilled for the completion of the Work.
- B. The WMATA Manual of Design Criteria establishes general design criteria for the Project that shall govern the design of temporary works as defined in the Specifications unless jurisdictional codes and regulations are more stringent, in which case the codes and regulations shall govern.

00304 CONTRACT DRAWINGS

- A. Contract Drawings are the plans, profiles, typical cross sections, general cross sections, elevations, schedules, and details listed or included in the Contract Documents, which represent requirements for the Project.
- B. The WMATA CAD Manual shall be adhered to for preparation of As-built Drawings by the Contractor.

00310 EXISTING CONDITIONS

- A. The Bidder shall conduct a site visit to familiarize itself with the site prior to submitting a Bid. The Authority will make the Site(s) available to the Bidder for this purpose.

00320 GEOTECHNICAL REPORT [N/A]

00330 ENVIRONMENTAL REPORT [N/A]

00340 WMATA SAFETY AND SECURITY REQUIREMENTS

- A. This Section lists the safety and security related documents that establish the safety requirements for the Project.
 - 1. WMATA Construction Safety and Environmental Manual Requirements: A compilation of the safety and reporting requirements for this Project.
 - 2. WMATA Safety and Security Certification Program Plan: A compilation of the safety and security certification requirements for the Project.

00350 QUALITY ASSURANCE AND QUALITY CONTROL

- A. Section 01470, QUALITY MANAGEMENT SYSTEM, establishes the quality requirements for the development of the Quality Management Plan by the Contractor for execution of the Project.

END OF SECTION

Section 00400

BID FORMS AND SUPPLEMENTS

This Section includes forms and supplements for submitting Bids.

THIS PAGE NOT USED

Section 00410

BID FORMS

This Section includes the Bid Forms that are required to be submitted with Bid.

THIS PAGE NOT USED

Section 00413

Contract Number: FQ16005

Date of Request: October 23, 2015

Project Name: Structural Retrofit of Beam B9 at Farragut North Metrorail Station

Project Location:

INVITATION FOR BID containing information requested herein shall be submitted by the Bidder so as to be received before the time and date listed in Section 00100, INVITATION FOR BID, at the Washington Metropolitan Area Transit Authority, Office of Procurement, PRMT File Room 3C-02, 600 Fifth Street, N.W., Washington DC 20001. Questions may be directed to William J. Geroux, Contract Administrator, telephone: (202) 962-2467, email: wgeroux@wmata.com

In response to your Invitation for Bid for the above referenced Contract, the undersigned hereby proposes to furnish all labor, equipment, and materials and perform all work to construct the Project in strict accordance with the Contract requirements for the consideration of the amount Bid on the Contract Bid Schedule. If awarded the Contract within the Bid Acceptance Period, the undersigned agrees to execute the Contract within 10 Days and to furnish, if required, performance and payment bonds on standard Authority forms with good and sufficient surety or sureties.

If the Contract is executed, the undersigned further agrees to commence the Work within 10 Days after the receipt of Notice to Proceed and to complete the Work within the time specified in the Contract.

The undersigned acknowledges receipt of the following amendments to the **Invitation for Bid** under FQ16005.

Amendment Number _____, dated _____
Insert # Insert Date

Amendment Number _____, dated _____
Insert # Insert Date

Amendment Number _____, dated _____
Insert # Insert Date

Note: Failure to acknowledge receipt of all amendments may cause the Bid to be considered non-responsive to the request, which would require rejection of the Bid as unacceptable.

BIDDER:

Insert Firm Name

Insert Street Address

Insert City, State, Zip Code

Insert Telephone Number

Insert DUNS Number

Insert Name of Bidder and Bidders Title

Insert Bidders Signature

Directions for Submitting Bid

1. Read and comply with the Invitation Instructions. This form shall be submitted with your Bid.
2. Bid Form and related required documents must be sealed, marked, and addressed as follows:

**Washington Metropolitan Area Transit Authority
PRMT File Room 3C-02
Bid under FQ16005
Office of Procurement
600 Fifth Street, N.W.
Washington, DC 20001**

3. Bids shall be timely mailed or hand delivered to reach WMATA before 1400 (local time) on day of Bid opening. For Bids delivered prior to the bid opening date, please contact Demetrius Smith, Records Management Analyst, telephone: (202) 962-5149. Mr. Smith will secure your Bid until opening date.

Section 00431

BID SECURITY (BID BOND FORM)

This Section includes the Supplementary Bid Forms that are required to be submitted with the Bid.

BID BOND

Invitation for Bid No.: FQ16005

Bid Closing Date: _____
Insert date

Penal Sum of Bond: _____
Insert \$ or %

5% of Bid Price or Amount: _____
Insert amount

Date Bond Executed: _____
Insert Date

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto, are firmly bond to the Washington Metropolitan Area Transit Authority in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: provided, that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the Bid identified above:

NOW, THEREFORE, if the Principal, upon acceptance by the Authority of this Bid identified above, within the period specified therein for acceptance (60 Days if no period is specified), shall execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the Bid as accepted within the time specified (10 Days if no period is specified) after receipt of the forms by him, or in the event of failure so to execute such further contractual documents and give such bonds, if the Principal shall pay the Authority for any cost of procuring the work which exceeds the amount of its Bid, then the above obligation shall be void and of no effect.

Each Surety executing this instrument hereby agrees that its obligation shall not be impaired by any extension(s) of the time for acceptance of the Bid that the Principal may grant to the Authority notice of which extension(s) to the Surety(ies) being hereby waived provided that such waiver shall apply only with respect to extensions aggregating not more than 60 Days in addition to the period originally allowed for acceptance of the Bid.

Principals

1. Firm Name: *Corporate Seal*

Firm Address:

Name, Title and Signature

State of Incorporation: _____

2. Firm Name: *Corporate Seal*

Firm Address:

Name, Title and Signature

State of Incorporation: _____

3. Firm Name: *Corporate Seal*

Firm Address:

Name, Title and Signature

State of Incorporation: _____

Corporate Surety(ies)

Surety A Firm Name: Corporate Seal

Firm Address:

Liability Limit:

Name, Title and Signature

State of Incorporation: _____

Surety B Firm Name: Corporate Seal

Firm Address:

Liability Limit:

Name, Title and Signature

State of Incorporation: _____

Surety C Firm Name: Corporate Seal

Firm Address:

Liability Limit:

Name, Title and Signature

State of Incorporation: _____

Attach additional pages as needed.

Instructions

1. This form is authorized for use whenever a Bid guaranty is required in connection with construction work.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.
3. The penal sum of the bond may be expressed as a percentage of the proposal price (e.g., 5% of the Bid Price) if desired or may be expressed in dollars and cents.
4. Corporation executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and state) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)".
5. Corporations executing the bond shall affix their corporate seals.
6. The name of each person signing this proposal bond should be typed in the space provided.

THIS PAGE NOT USED

Section 00432

COMPLIANCE/EXCEPTION INFORMATION

(Submit with Bid)

Indicate whether this Bid submitted is intended to fully comply with the IFB Documents of this Invitation for Bid, or if certain exceptions are taken. If exceptions are taken, the Bidder shall clearly identify all exceptions to the requirements, terms, or conditions of any part of this IFB. Each exception must be specifically related to the particular part of the IFB to which the exception is taken. The Bidder must support and explain the reason for all exceptions taken and explain the impact, if any, on the IFB requirements and state the necessity for or advantage of the exception.

Check on statement below.

- The Bidder certifies that its Bid is intended to comply fully with all IFB Documents
- The Bidder certifies that its Bid is intended to comply fully with all IFB Documents, except as noted (add additional sheets to explain).

THIS PAGE NOT USED

Section 00433

BRAND NAME OR EQUAL FORM

(Submit with Bid)

Bidder is required to state in the spaces below the Manufacturer's Name, Part/Product Number, Description, and to provide relevant specifications, including technical data and Material Safety Data Sheets. Be advised that these items, if any, are only set apart for identification. If products, other than those specified, are not listed here, the Bid will be viewed as providing the as-specified products.

Spec Section/Product Specified: _____
Manufacturer: _____
Product Proposed: _____

Spec Section/Product Specified: _____
Manufacturer: _____
Product Proposed: _____

Spec Section/Product Specified: _____
Manufacturer: _____
Product Proposed: _____

Spec Section/Product Specified: _____
Manufacturer: _____
Product Proposed: _____

Note: If applicable, attach additional sheets as necessary in this format. This form is included to establish a format for submission by the Bidder of an "or Equal" and will be utilized for the Bid submittal to the Authority for equal products by the Contract. *This form may also be used during the construction of the Contract.*

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Section 00434

BID SCHEDULE

(Submit with Bid)

A. DESCRIPTION OF WORK

The Contractor shall build the Facilities in the manner and at the location set forth in the IFB Documents of this Invitation, and in accordance with the Bid as finally accepted by the Authority. The Contractor shall construct the facility in strict accordance with the Contract Documents and in full compliance with the Rules and Regulations of the Jurisdictional Authorities.

B. BID SCHEDULE

The Contractor shall furnish all necessary labor, materials, tools, equipment and supervision to construction the improvements as described in the contract specifications and drawings for the Structural Retrofit of Beam B9 at Farragut North Metrorail Station.

The Contract shall submit the bid breakdown for the following items:

BI#	Price Schedule	QTY	UOM	Total
B9-01	GA, GR, Mobilization	1	LS	
B9-02	Furnish, Install, Remove Temporary Barricades, 8' High	1	LS	
B9-03	Removal and Restoration of Granite Bench and Pylon	1	LS	
B9-04	Demolition, Saw-cutting, and Removal	1	LS	
B9-05	Externally Bonded CFRP Concrete Strengthening	1	LS	
B9-06	Cast-In-Place Structural Concrete and Grout	1	LS	
B9-07	Structural Steel, Plates, Anchor Rods, Jacking	1	LS	
B9-08	Sprayed Fireproofing	1	LS	
B9-09	Ceiling and Floor Tile	1	LS	
B9-10	1-1/2" GFRP Cladding	1	LS	
B9-11	Ductwork, Grills, Testing and Balancing	1	LS	
B9-11	Electrical Conduit Modifications	1	LS	

Bid Schedule

Name of Bidder or Contractor: _____

Section 00451

REPRESENTATIONS AND CERTIFICATIONS FORM

(Submit with Bid)

REPRESENTATIONS AND CERTIFICATIONS

(Federally Funded Supply/Service/Construction Contracts)

Instructions: Check or complete all applicable boxes or blocks on this form and submit it with your Bid.

A. REPRESENTATIONS

1. TYPE OF BUSINESS ORGANIZATION (RC-101, MAY 07)

By submission of this Bid, the Bidder represents that it operates as

- An individual
- A partnership
- A limited liability company
- A joint venture
- A nonprofit organization
- A corporation, incorporated under the laws of the State of _____
Insert State

2. AFFILIATION AND IDENTIFYING DATA (RC-102, MAY 07)

Each Bidder shall complete (a), (b) if applicable, and (c) below, representing that:

- a. It is is not, owned or controlled by a parent company. For this purpose, a parent company is defined as one, which either owns or controls the activities and basic business policies of the Proposer. To own another company means the parent company must own at least a majority, i.e., more than 50 percent, of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine, or veto basic business policy decisions of the bidder, such other company is considered the parent of the Bidder. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements or otherwise.

Bidder: _____
Insert Name

Parent Company: _____
Insert Parent Company Name or "None"

Main Office Address: _____
Insert Street Address, City, State and Zip Code

- b. If the Bidder has no parent company, it shall provide in the applicable space below its own Employer's Identification Number (EIN), (i.e., number used on Federal Tax Returns or, if it has a parent company, the EIN of its parent company). Bidder EIN: _____ or Parent Company's EIN: _____
- c. If a Data Universal Numbering Systems (DUNS) number has not been established for the address entered on the Invitation, Bid, and Award Form, the Authority will arrange for the assignment of this number after award of a contract and will notify the Contractor accordingly.

3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (RC-103, MAY 07)

This representation is applicable to federally assisted contracts. By submission of this Bid, the Bidder represents that:

- a. It has has not participated in a previous contract or subcontract subject to either the Equal Opportunity Clause of this Solicitation, or the clause contained in Parts II and IV of Executive Order 11246, as amended; which prohibits discrimination on the basis of race, color, creed, national origin, sex, age; and
- b. It has has not filed all required compliance reports; and
- c. Representations indicating submittal of required compliance reports signed by proposed Subcontractors will be obtained prior to Subcontract awards.

4. DISADVANTAGED BUSINESS ENTERPRISE (RC-104, MAY 07)

This representation is applicable to federally assisted contracts. By submission of this Bid, the Bidder represents that:

- a. It is is not a disadvantaged business enterprise. "Disadvantaged Business Enterprise" means a for-profit small business concern that is at least 15% owned by one or more individuals who are both socially and economically disadvantaged individuals or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. "Socially and Economically Disadvantaged Individuals" is defined in the Appendix B, Section 4, paragraph I; and
- b. It is is not currently certified by WMATA as a disadvantaged business enterprise.

5. AFFIRMATIVE ACTION COMPLIANCE (RC-105, MAY 07)

This representation is applicable to federally assisted contracts of \$50,000 or more that are awarded to Contractors with 50 or more employees. By submission of this Bid, the Bidder represents that:

- a. It has a workforce of employees.

- b. It has developed and has on file or has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR Parts 60-1 and 60-2), or
- c. It had not previously had contracts subject to the written affirmative action program requirements of the rules and regulations of the Secretary of Labor.

B. CERTIFICATIONS

1. COVENANT AGAINST GRATUITIES (RC-106, MAY 07)

By submission of this Bid, the Bidder certifies, and in the case of a joint Bid, each party thereto certifies as to its own organization, that in connection with this procurement: Neither it nor any of its employees, representatives, or agents have proposed or given gratuities (in the form of entertainment, gifts or otherwise) to any director, officer, or employee of the Authority with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of the Contract.

2. CONTINGENT FEE (RC-107, MAY 07)

By submission of this Bid, the Bidder certifies, and in the case of a joint Bid, each party thereto certifies as to its own organization, that in connection with this procurement:

- a. It has has not employed or retained any company or persons (other than a full-time, bona fide employee working solely for the Bidder) to solicit or secure this Contract, and
- b. It has has not paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the Bidder) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this Contract.

3. CLEAN AIR AND WATER CERTIFICATION (RC-108, MAY 07)

This certification is applicable if the Contract will be federally assisted and the Bid exceeds \$100,000, or the Contracting Officer believes that orders under an indefinite contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by the U.S. Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt:

- a. Any facility to be utilized in the performance of this proposed Contract is is not currently certified by WMATA as a disadvantaged business enterprise.
- b. AFFIRMATIVE ACT listed on the EPA list of Violating Facilities:
- c. Bidder shall immediately notify the Contracting Officer, before award, of the receipt of any communications from the Administrator, or a designee of the EPA, indicating that any

facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

- d. Proposer shall include a certification substantially the same as this certification, including this paragraph, in every non-exempt Subcontract.

4. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (RC-109, MAY 07)

This certification is applicable to federally assisted contracts over \$25,000.

- a. Primary Covered Transactions. This certification applies to the Proposal submitted in response to this solicitation and will be a continuing requirement throughout the term of any resultant contract.

(1) In accordance with the provisions of Appendix A to 49 Code of Federal Regulations (CFR) Part 29, the Proposer certifies to the best of its knowledge and belief that it and its principals:

- (a) are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- (b) have not, within a three-year period preceding this Proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph B.4.a(1)(b) of this Certification; and
- (d) have not, within a three-year period preceding this Proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the Proposer is unable to certify to any of the statements in this certification, the Proposer shall attach an explanation to this Proposal.

- b. Lower Tier Covered Transactions. This certification applies to a subcontract at any tier expected to equal or exceed \$25,000 and will be a continuing requirement throughout the term of the prime contract.

(1) In accordance with the provisions of Appendix B to 49 Code of Federal Regulations (CFR) Part 29, the prospective lower tier Subcontractor certifies, by submission of this Bid, that neither it nor its principals is currently debarred, suspended, proposed for

debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.

- (2) Where the prospective lower tier Subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Bid.
- c. The Certification required by paragraph B.4.b above shall be included in all applicable Subcontracts and a copy kept on file by the Contractor. The Contractor will be required to furnish copies of certifications to the Contracting Officer upon the Contracting Officer's request.

5. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION (RC-110, MAY 07)

- a. By submission of this Bid, the Bidder certifies, and in the case of a joint Bid, each party thereto certifies as to its own organization, that in connection with this procurement:
 - (1) The prices in this Bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communications, or agreement with any other Bidder or with any other competitor, as to any matter relating to such prices;
 - (2) Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by the Bidder and will not be knowingly disclosed by the Bidder prior to the opening of bids (in the case of a sealed bid solicitation) or prior to award (in the case of a negotiated procurement), directly or indirectly, to any other Bidder or to any competitor; and
 - (3) No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.
- b. Each person signing this Bid certifies that:
 - (1) He or she is the person in the Bidder's organization responsible within that organization for the decision as to the prices being proposed herein and that he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or
 - (2) He or she is not the person in the Bidder's organization responsible within that organization for the decision as to the prices being proposed herein, be that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated; and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify.

6. CERTIFICATION OF NONSEGREGATED FACILITIES (RC-111, MAY 07)

This certificate is applicable to federally assisted contracts over \$10,000.

- a. By submission of this Bid, the Bidder certifies, and in the case of a joint Bid, each party hereto certifies as to its own organization, that in connection with this procurement:
- (1) It does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.
 - (2) The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in the Contract.
 - (3) As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise.
 - (4) It further agrees that (except where it has obtained identical certifications from proposed Subcontractors for specific time periods) it will:
 - (a) Obtain identical certifications from proposed Subcontractors before the award of Subcontracts under with the Subcontractor will be subject to the Equal Opportunity clause;
 - (b) Retain such certifications in its files; and
 - (c) Forward the following notice to such Subcontractors (except if the proposed Subcontractors have submitted identical certifications for specific time periods).

C. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NON-SEGREGATED FACILITIES

A Certification of Non-segregated Facilities must be submitted prior to award of a Subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for such Subcontract or for all Subcontracts during a period (i.e., quarterly, semiannually, or annually).

1. NONDISCRIMINATION ASSURANCE (RC-112, MAY 07)

By submission of this Bid, the Bidder certifies, and in the case of a joint Bid, each party hereto certifies as to its own organization, in connection with this procurement that it will not discriminate on the basis of race, color, creed, national origin, sex, age in the performance of this Contract. The Bidder is required to insert the substance of this clause in all Subcontracts and purchase orders. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as

the Authority deems appropriate. The Bidder further agrees by submitting this Bid that it will include this certification, without modification, in all Subcontracts and purchase orders.

2. CERTIFICATION OF RESTRICTIONS ON LOBBYING (RC-113, MAY 07)

This certification is applicable to federally assisted contracts if the Bid exceeds \$100,000.

a. By submission of this Bid, the Bidder certifies, and in the case of a joint Bid, each party thereto certifies as to its own organization, that to the best of his or her knowledge or belief:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, the undersigned shall complete and submit Standard Form – LLL, “Disclosure of Lobbying Activities.”

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers and that all sub-recipients shall certify and disclose accordingly.

b. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352, as amended. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. BUY AMERICA ACT CERTIFICATION (RC-114, MAY 07)

The Buy America requirements apply to federally assisted construction contracts and acquisition of goods or rolling stock contracts valued at more than \$100,000.

a. By submission of this Bid, the Bidder certifies, and in the case of a joint Bid, each party thereto certifies as to its own organization, that in connection with this procurement it will comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded project are produced in the United States, unless a waiver has been granted by FTA or the product is

subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out in 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11.

- b. Bidder must submit to the Authority the appropriate Buy America certification (below) with all Bids on FTA-funded contracts, except those subject to a general waiver. Bids that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier Subcontractors. Mark the applicable certifications below:

(1) Certification requirement for procurement of steel, iron, or manufactured products:

- a. Certificate of Compliance with 49 U.S.C. 5323(j)(1). The Bidder hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.
- b. Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1). The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 CFR Part 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

(2) Certification requirement for procurement of buses, other rolling stock, and associated equipment:

- a. Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C). The Bidder hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations in 49 CFR Part 661.11.
- b. Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C). The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 CFR Part 661.11, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

4. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT

- a. Criminal background checks of all Contractor employees working at a WMATA facility on this Contract will be required. Eligibility for access to WMATA property will be based on the WMATA's pre-employment Criminal Background Check criteria. WMATA will provide the Contractor employees with background check forms that the Contractor employees must complete and sign. The forms will require the Contractor employees to appear in person, provide their full legal names, including middle if applicable, as well as their Social Security number, in addition to other information that will be necessary to conduct the background check. The operating hours are Monday through Friday from 0700 to 1530 except holidays. Upon receipt of the completed, signed forms, WMATA will conduct background checks including criminal court searches and Social Security number verifications of the Contractor employees. If there is derogatory information that would disqualify a Contractor employee from receiving a badge to access WMATA property, the Contractor and its Subcontractor employee will be notified that the background check failed. The completed forms are

secured in a locked file cabinet and are destroyed one (1) year after the expiration date on the Contractor's employee badge. These background checks are expected to take one (1) business day to processing, so the Contractor employee must allow sufficient time for completion. The background check is free of charge.

- b. Background checks are conducted to promote a safe work environment and to protect our company's most important assets; the people we serve and the people with whom we serve. This enables WMATA management in making prudent decisions and maintaining a high quality workforce. Contractor employees who successfully complete the background checks are eligible to enter WMATA property once they are issued a Contractor badge. On the other hand, Contractor employees who do not authorize background checks or whose background checks are unsatisfactory will not be granted Contractor badges or access to WMATA property. The records generated by these background checks that contain private information will not be disclosed unless disclosure is required under the PARP/Privacy Policies.

5. CERTIFICATION OF NON-DELINQUENT TAXES

This certification is applicable to federally-assisted contracts.

- a. By submission of this Bid, the Bidder certifies, and in the case of a joint Bid, each party thereto certifies as to its own organization, that in connection with this procurement:
 - (1) It has not been convicted over the past 3 years of violating any federal criminal tax law or failed to pay any tax.
 - (2) It has certified if it has been notified of an unresolved tax lien or any unsatisfied federal tax delinquency in excess of \$3,000 and that it is paying tax debts through an installment agreement or have requested a collection due process hearing.
 - (3) The Bidder agrees that a breach of this certification is a violation of the Federal Acquisition Regulation.
 - (4) As used in this certification, the term "tax delinquency" means an outstanding debt for which a notice of lien has been filed in public records.
 - (5) If further agrees that (except where it has obtained identical certifications from proposed Subcontractors for specific time periods) it will:
 - (a) Obtain identical certifications from proposed Subcontractors before the award of Subcontracts under which the Subcontractor will be subject to Federal Acquisition Regulation;
 - (b) Retain such certifications in its files; and
 - (c) Forward the following notice to such Subcontractors (except if the proposed Subcontractors have submitted identical certifications for specific time periods):

D. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NON-DELINQUENT TAXES

A Certification of Non-Delinquent Taxes must be submitted prior to award of a Subcontract exceeding \$100,000, which is not exempt from the provisions of Federal Acquisition Regulation. The certification may be submitted either for such Subcontract or for all Subcontracts during a period (i.e., quarterly, semiannually or annually).

E. DISCLOSURES OF INTERESTS OF WMATA BOARD MEMBERS (RC-117, MAY 2013)

For purposes of this disclosure, terms in bold are defined by the Code of Ethics for Members of the WMATA Board of Directors a copy of which is available at www.wmata.com. Financial interest includes ownership interests and prospective and actual income. Firm includes parents, subsidiaries and affiliates.

By submission of this offer, the Bidder certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that to the best of your knowledge, information and belief in connection with this procurement:

1. No WMATA Board Member, Household Member or Business Associate has a financial interest in this firm, in a Financial Transaction with the Authority to which this firm is a party or prospective party, or in an Actual or Prospective Business Relationship with the Authority to which this firm is a party.
2. The following WMATA Board Member(s), Household Member(s) or Business Associate(s) has a financial interest in this firm, in a Financial Transaction with the Authority to which this firm is a party or prospective party, or in an Actual or Prospective Business Relationship with the Authority to which this firm is a party. Include in Nature of Interest below a description of the financial interest and (1) for ownership interests, the value of the interest, the name and address of the firm in which the interest is held, and the total equity or equivalent interest of the firm; and (2) for income, the amount of all income received by the Board Member, Household Member or Business Associate in the current and preceding fiscal year for services provided, and the name and address of the firm from which the income was received.

SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

BIDDER:

Insert firm name

Insert street name

Insert city, state, zip code

Insert telephone number

Representative authorized to act on
Bidder's behalf:

Insert name, title

Date: _____
Insert date

Insert/Print Name of Bidder

Insert Bidder's title

Insert Signature of Bidder

Section 00452

BID DATA FORM

(Submit with Bid)

Contract Number: FQ16005

Date of Request: _____

Project Name: Structural Retrofit of Beam B9 at Farragut North Metrorail Station

Project Location:

1. Name of Firm:
2. Legal Address:
3. Legal Entity: Individual Partnership Joint Venture Corporation
4. Date Organized:
5. State in which incorporated:
6. Names and addresses of Officers or Partners:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
 - f. _____
7. How long has your firm been in business under its present name? _____
Number of Years
8. Attach as SCHEDULE 7 a list of current contracts, each with contract amount, owner, architect-engineer, and character or type of work and percentage of completion. Also, include those projects on which you are apparent low bidder, but for which you have not received an award of contract.
9. Attach as SCHEDULE 8 a list of contracts, each with contract amount, owner, architect engineer, and character or type of work, for contracts completed in the last 5 years.

10. What is the estimated work placement value required per year to complete the work described in SCHEDULE 7? 20xx: \$ _____ 20xx: \$ _____ 20xx: \$ _____
11. Have you ever been denied an award on which you were low bidder? Yes No If the answer is YES, attach as SCHEDULE 10 the full particulars regarding each occurrence.
12. Have you ever failed to complete any contract, other than current, on which you were the low bidder? Yes No If the answer is YES, attach as SCHEDULE 11, the full particulars regarding each occurrence.
13. Have you ever been assessed liquidated damages or actual damages for late completion within the last five years? Yes No If the answer is YES, attach as SCHEDULE 12 the full particulars regarding each occurrence.
14. Financial resources available as working capital for this Contract:
 - a. Case on hand: \$ _____ Date: _____
 - b. Sources of credit: _____
15. Attach as SCHEDULE 14 certified financial statements and letters from banks regarding credit as required by Section 00200, INSTRUCTIONS TO BIDDERS, of this Contract.
16. Attach as SCHEDULE 15 the construction experience of each officer and principal individual of your organization; including present position, years of construction experience, magnitude and type of work, and in what capacity.
17. What percentage of the Work (Contract amount) do you intend performing with your own personnel? _____%
18. Attach as SCHEDULE 17 a list of all Subcontractors and the percentage and character of work (Contract amount) which each will perform.
19. Attach as exhibits completed Bid Data Forms for each of the Subcontractors listed in SCHEDULE 17 above.
20. If the Contractor or Subcontractor is a joint venture, submit Bid Data Form for each member of the joint venture.

The above information is confidential and will not be divulged to any unauthorized person or persons. The signatory of this questionnaire certifies to the truth and accuracy of all statements, answers, and attachments.

For: _____

DUNS # _____

Date: _____

Signatory's Name

Signatory's Title

Signatory's Signature

Location: _____

Section 00453

DISADVANTAGED BUSINESS ENTERPRISE (DBE) DATA

(Submit with the Bid)

For Disadvantaged Business Enterprise (DBE) Data and forms, refer to Appendix B of Section 00400, BID FORMS AND SUPPLEMENTS.

Section 00492

BID AS ACCEPTED

- A. Instructions: Insert here the Bid as Accepted.

- B. See Section 00910, AMENDMENTS, for Amendment Letters.

Section 00500

AGREEMENT

NOTICE TO BIDDERS:

- A. This Section includes the Contract Form to be submitted by the successful Bidder and represents the legal instrument binding the two parties to the Work once the document is signed by the Authority and the Contractor.
- B. The following form is included for the Contractor's information and use in the event the Bidder is awarded the Contract. It is not required to be submitted with the Bid.

Section 00510

CONSTRUCTION CONTRACT FORM

Contractor:

Contract Number: FQ16005

Date:

Contract For: Structural Retrofit of Beam B9 at Farragut North Metrorail Station

Contract Price: \$

Period of Performance: _____ calendar days

In consideration of the covenants contained herein, the Washington Metropolitan Area Transit Authority (hereinafter called the Authority), represented by the Contracting Officer executing this Contract, and the individual, partnership, joint venture, or corporation named above (hereinafter, the Contractor), mutually agree to perform this Contract in strict accordance with its provisions. The Contract consists of: the IFB Documents and all documents referenced or attached to the IFB Documents including the following:

1. Bid as finally accepted.
2. Other publications referenced in the IFB Documents.
3. Amendment Number(s):

ALTERATIONS: The following alterations were made to this Contract before it was signed by the parties hereto:

In Witness Whereof, the parties hereto have executed this Contract as of the date entered above.

Attest _____ *By: _____

Attest _____ *By: _____

Attest _____ *By: _____

Washington Metropolitan Area Transit Authority

By: _____

*NOTE: Execution for the Contractor that is an individual, corporation or partnership shall be accompanied by the Power of Execution (Section 00542) that follows. A Joint Venture Contractor must complete the Power of Attorney (Section 00541) that follows. All persons executing this Contract must complete the appropriate Certification of the person's authority to act on behalf of the Contractor.

Section 00540

ATTACHMENTS TO THE CONTRACT

Attachments to supplement the Agreement Form are included for the Bidder's information and use in the event Bidder is awarded the Contract. They are not required to be submitted with the Bid.

Section 00541

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS,

That _____
Insert names of all venturers of the joint venture

constituting all of the venturers of the joint venture known as

Insert name of the joint venture

which is desirous of entering into a contract with the

Washington Metropolitan Area Transit Authority,

do hereby designate and appoint

Insert name of appointed venturer

one of the venturers hereinafter called the "Managing Sponsor," as their true and lawful attorney with the power, on their behalf and in the name and on behalf of the joint venture, to represent and bind the undersigned and the joint venture in all matters in connection with Contract, to make, execute, seal, and deliver on behalf of the joint venture and as its act and deed, any and all contracts, change orders, monthly and final payments certificates, and other like instruments. The undersigned specifically acknowledge and agree that the execution of such Bid or Contract by the Managing Sponsor shall constitute the agreement of each venturer to be jointly and severally liable for any and all of the duties and obligations of the joint venture arising such Bid or Contract.

IN WITNESS WHEREOF, the undersigned have executed this Power of Attorney

This _____ day of _____, 2015

Contractor Name:

Attest _____

By: _____

Contractor Name:

Attest _____

By: _____

Contractor Name:

Attest _____

By: _____

Section 00542

POWER OF EXECUTION

KNOW ALL PERSONS BY THESE PRESENTS,

That _____,
Insert names of all venturers of the joint venture

constituting all of the venturers of the joint venture known as

Insert name of the joint venture

which is desirous of entering into a contract with the

Washington Metropolitan Area Transit Authority,

do hereby designate and appoint

Insert name of appointed venturer

one of the venturers hereinafter called the "Managing Sponsor," as their true and lawful attorney with the power, on their behalf and in the name and on behalf of the joint venture, to represent and bind the undersigned and the joint venture in all matters in connection with Contract, to make, execute, seal, and deliver on behalf of the joint venture and as its act and deed, any and all contracts, change orders, monthly and final payments certificates, and other like instruments. The undersigned specifically acknowledge and agree that the execution of such Bid or Contract by the Managing Sponsor shall constitute the agreement of each venturer to be jointly and severally liable for any and all of the duties and obligations of the joint venture arising such Bid or Contract.

IN WITNESS WHEREOF, the undersigned have executed this Power of Execution

this _____ day of _____, 2015

Contractor Name:

Attest _____

By: _____

Contractor Name:

Attest _____

By: _____

Contractor Name:

Attest _____

By: _____

Section 00550

NOTICE TO PROCEED (NTP)

Section 00600

BONDS AND CERTIFICATES

This Section includes bond forms required to be submitted by the Contractor.

Section 00610

BOND REQUIREMENTS

- A. Requirements: Within 10 Days after the prescribed forms are presented for signature to the Bidder to whom award is made, a written Contract and Attachments (Power of Attorney and Power of Execution) on the forms provided in Section 00500, AGREEMENT, shall be executed and delivered to the Contracting Officer, together with a performance bond and payment bond if the Contract Price is \$100,000 or more, each with good and sufficient surety or sureties acceptable to the Authority. Corporations executing the bonds as sureties must be among those appearing on the U.S. Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. The penal sums of such bonds shall be as follows:
1. Performance Bond: The penal sum of the performance bond shall equal 100 percent of the Contract Price.
 2. Payment Bond: The penal sum of the payment bond shall equal 100 percent of the Contract Price.
- B. Failure to Furnish: In the event the required bonds are not furnished as specified, the Contracting Officer may issue the Notice to Proceed, however, no payment will be made to the Contractor until the required bonds are furnished.

Section 00611

PERFORMANCE BOND

BIDDER'S INFORMATION NOTICE: The following is included for the Bidder's information and use in the event Bidder is awarded the Contract. It is not required to be submitted with the Bid.

Contract Number: FQ16005

Date: _____

Penal Sum of Bond: \$ _____

Date Bond Executed: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, the Principle and Surety(ies) hereto, are firmly bound to the Washington Metropolitan Area Transit Authority (hereinafter called the Authority) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, that, where the Sureties and corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal entered into the Contract identified above:

NOW, THEREFORE, if the Principal shall perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the Authority, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived, then the above obligation shall be void and of no effect. Surety acknowledges Authority can advance the date of payments to Contractor, and by so doing the Surety remains liable under the terms of the bond.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this performance bond and have affixed their seals on the date set forth above.

Principals

1. Firm Name:

Corporate Seal

Firm Address:

Signature and Title

State of Incorporation:

2. Firm Name: Corporate Seal

Firm Address:

Signature and Title

State of Incorporation:

3. Firm Name: Corporate Seal

Firm Address:

Signature and Title

State of Incorporation:

Corporate Surety(ies)

Surety A Firm Name: Liability Limit: \$ Corporate Seal

Firm Address:

Signature and Title

State of Incorporation:

Surety B Firm Name: Liability Limit: \$ Corporate Seal

Firm Address:

Signature and Title

State of Incorporation:

Surety C Firm Name: Liability Limit: \$ Corporate Seal

Firm Address:

Signature and Title

State of Incorporation:

Attach additional pages as needed.

Bond		
Premium	Total Premium	\$
Schedule		

Performance Bond Instructions:

This form is authorized for use in connection with contracts for construction work or the furnishing of labor, materials, equipment, supplies, and services.

The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership or joint venture, or an officer of the corporation involved, evidence of their authority must be furnished.

Corporation executing the bond as sureties must be among those appearing on the Treasury Department's therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)".

Section 00612

PAYMENT BOND

Contract Number: FQ16005

Date: _____

Penal Sum of Bond: \$ _____

Date Bond Executed: _____

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto, are firmly bound to the Washington Metropolitan Area Transit Authority (hereinafter called the Authority) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: Provided, that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal entered into the Contract identified above:

NOW, THEREFORE, if the Principal shall promptly make payment to all claimants as hereinafter defined supplying services, labor, material, and/or equipment in the prosecution of the Work provided for in said Contract, and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived, then the above obligation shall be void and of no effect, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of 90 Days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due the claimant, and have execution thereon. The Authority shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:

- a. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to the Principal within 90 Days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where it maintains an office or conducts business, or its residence or such notice shall be served in any manner in which legal process may be served in the state or District of Columbia in which the aforesaid Project is located, save that such service need not be made by a public officer.
- b. After the expiration of one year following the date of final settlement of said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
- c. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this payment bond and have affixed their seals on the date set forth above.

Principals

- 1. Firm Name: _____
Firm Address: _____
Corporate Seal

Signature and Title
- 2. State of Incorporation: _____
Firm Name: _____
Firm Address: _____
Corporate Seal

Signature and Title
- 3. State of Incorporation: _____
Firm Name: _____
Firm Address: _____
Corporate Seal

Signature and Title
State of Incorporation: _____

Corporate Surety(ies)

Surety A Firm Name: _____ Liability Limit: \$ Corporate Seal
Firm Address: _____

Signature and Title

Surety B State of Incorporation: _____
Firm Name: _____ Liability Limit: \$ Corporate Seal
Firm Address _____

Signature and Title

Surety C State of Incorporation: _____
Firm Name: _____ Liability Limit: \$ Corporate Seal
Firm Address: _____

Signature and Title

State of Incorporation: _____

Attach additional pages as needed.

Payment Bond Instructions

1. This form is authorized for use in connection with contracts for construction work or the furnishing of labor, materials, equipment, supplies, and services.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership or joint venture, or an officer of the corporation involved, evidence of their authority must be furnished.
3. Corporation executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "Corporate Surety(ies)".
4. Corporations executing the bond shall affix their corporate seals.
5. The name of each person signing this performance bond should be typed in the space provided.
6. The date this bond is executed must be later than the Contract execution date.

THIS PAGE NOT USED

Section 00613

PERFORMANCE AND PAYMENT BONDS (ADDITIONAL BOND SECURITY)

If any surety upon any performance bond furnished in connection with this Contract becomes unacceptable to the Contracting Officer, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interest of the Authority and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

If any surety upon any payment bond furnished in connection with this Contract becomes unacceptable to the Contracting Officer, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interest of the Authority and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

Section 00620

CERTIFICATES

- A. This Section provides an area for conforming the IFB Documents with required Affidavits and Certificates provided by the Contractor; i.e., Certificates of Acceptance, Application for Payment, Insurance, Compliance including ADAAG Design and Construction Compliance and Checklists, Substantial Completion, Acceptance, and Final Payment.
- B. Instructions: Insert here all required Certificates to conform to the Contract Documents.

Section 00700

GENERAL CONDITIONS

This Section includes a compilation of contractual and legal requirements that list the rights, responsibilities, and relationships of the parties to a Contract and defines duties and limits of authority for design professionals and construction management in performance of contract administration. This Section shall be read in conjunction with Section 00800, Supplementary Conditions, which specifies modifications to these General Conditions, and which will be cited using the same last 2 digits of the Section number; i.e., a modification to Section 00724 will be indicated as Section 00824.

00701 DEFINITIONS

- A. As used throughout the Contract Documents, the following terms shall have the meanings set forth below:
1. **Acceptance:** Acknowledgement by the Authority of full and satisfactory physical completion and commissioning of all Work including Punch List items, all in accordance with the Contract Documents.
 2. **Agreement:** The Authority's form titled "Construction Contract Form" in this Invitation for Bid (IFB) that, upon execution by the Contractor and the Authority, creates the Contract between the two parties.
 3. **Amendment:** Written or graphic instructions issued to clarify, revise, add, or delete IFB requirements that are issued before the execution of the Agreement.
 4. **Approval of a Submittal or any other item** shall be solely for the purpose of establishing conformance to the Contract Documents.
 5. **As shown, as indicated, as detailed or words of similar import:** Shall be understood to mean that the reference is made to the Contract Documents.
 6. **As specified, as described, or words of similar import:** Shall be understood to mean that the reference is made to the Contract Documents.
 7. **Authority:** The Washington Metropolitan Area Transit Authority, created effective February 20, 1967, by Interstate Compact by and between Maryland, Virginia, and the District of Columbia, pursuant to Public Law 89-774, approved November 6, 1966.
 8. **Bid:** The written offer of a Bid submitted to the Authority as required by the Invitation for Bid (IFB).
 9. **Bidder:** The prospective Contractor who submits a Bid to perform the Work of the Contract.
 10. **Board of Directors:** The Board of Directors of the Washington Metropolitan Area Transit Authority.

11. Claim: A written demand or assertion by the Contractor seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms, or other relief, arising under or relating to this Contract.
12. Contract: The written Agreement between the Authority and the Contractor covering the Work as set forth in the Contract Documents.
13. Contract Documents: The documents consist of the IFB Documents, all Amendments issued before the effective date of the Agreement, and all Modifications issued after the effective date of the Contract; the Notice to Proceed; including the Contractor's Bid, as finally accepted by the Authority.
14. Contracting Officer: An employee with authority duly delegated from the powers of the Chief Procurement Officer to legally bind the Authority by signing a contractual instrument. The Contracting Officer is the Authority's primary point of contact for pre-award administration, Modifications above the limits of the Contracting Officer Representative, and Final Settlement.
15. Contracting Officer Representative: The person to whom the Contracting Officer delegates the authority and responsibility for post award execution of the Contract. The Contracting Officer Representative is the Authority's primary point of contact with its Contractor.
16. Contractor: The individual, partnership, firm, corporation, or other business entity that is contractually obligated to the Authority to furnish, through itself or others, the construction services described in the Contract, including all incidentals which are necessary to complete the Work in accordance with the Contract.
17. Contract Price: The amount payable to the Contractor under the terms and conditions of the Contract based on lump sum prices, unit prices, fixed prices, or combination thereof, with adjustments made in accordance with the Contract.
18. Day: Calendar day except where the term working day or like term is used.
19. Designer: The individual, partnership, firm, corporation or other business entity that is either the Contractor, or employed or retained by the Contractor, to manage and perform the design services for the Project.
20. Equivalent: Equal or better quality and performance to that specified in the Contract Documents.
21. Final Payment: The last payment made to the Contractor following Acceptance of the Work. For full description, refer to Section 00755, FINAL PAYMENT.
22. General Conditions: A compilation of contractual and legal requirements that lists the rights, responsibilities, and relationships of the parties to a contract and defines duties and limits of authority for design professionals and construction management in performance of contract administration.

23. General Requirements: A compilation of the conditions and performance requirements (Division 1) peculiar to the specific contract that govern the execution of the design and construction work.
24. IFB (Invitation for Bid) Documents: The documents as defined in Section 00301, IFB DOCUMENTS.
25. Industry Standards: Drawings, documents, and specifications or portions thereof published by industry organizations. Industry Standards are not Contract Documents unless specifically listed as such in a WMATA Standard Specification or WMATA Guide Specification.
26. Jurisdictional Authority: Refers to Federal, State, and local authorities or agencies having approval authority over work to which reference is made.
27. Legal Requirements: All federal, state and local laws, ordinances, rules, orders, decrees, and regulatory requirements such as: building codes, mechanical codes, electrical codes, fire codes, Americans with Disabilities Act Accessibility Guidelines (ADAAG) regulations and other regulations of any government or quasi-government entity that are applicable to the Project.
28. Milestone: A specified date in the Contract by which the Contractor is required to complete a designated portion or segment of the Work
29. Modification: A written document issued pursuant to Section 00748, CHANGES, which alters the scope of the Work, the Schedule, the Contract Price, the Period of Performance, or makes any other change to the Contract after award or execution of the Contract.
30. Notice to Proceed: Written notice issued by the Authority establishing the date on which the Contractor may commence Work and directing the Contractor to proceed with all or a portion of the Work.
31. Operations Readiness Date (ORD): The date upon which WMATA certifies that the system and equipment are complete and capable of supporting revenue rail service.
32. Option: A unilateral right in the Contract by which, for a specified time, the Authority may elect to purchase, at a predetermined price specified in the Contract, additional equipment, supplies, services, or work called for by the Contract.
33. Period of Performance: The time allotted in the Contract Documents for completion of the Work. The Period of Performance begins upon the effective date of the Notice to Proceed and ends on the date of Acceptance. Period of Performance incorporates the Milestones established for the Contract.
34. Product Data: Information furnished by the Contractor to describe materials used for some portion of the Work, such as written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, and diagrams.
35. Project: The construction of the facility described in the Contract Documents.

36. Punch List: Work that remains to be completed after Substantial Completion. This Work must be completed as a condition of Final Completion and Acceptance.
37. Request for Information (RFI): The document by which the Bidders or Contractor request clarification, verification, or information concerning a portion of the IFB or the Work.
38. Shop Drawings: Fabrication, erection, layout, setting, schematic, and installation drawings prepared by the Contractor for permanent structures, equipment, and systems designed by it to comply with the Contract Documents.
39. Similar: Generally the same but not necessarily identical; details shall be worked out in relation to location and relation to other parts of the Work.
40. Site: The areas that are occupied by or used by the Contractor and Subcontractors during performance of the construction of the Project as indicated in the Contract Documents.
41. Subcontract: Any Contract between the Contractor and a Subcontractor, or between Subcontractors of any tier, to perform a portion of the Work.
42. Subcontractor: An individual, firm, partnership, or corporation that has a contractual obligation with the Contractor or other Subcontractor or Supplier.
43. Submittal: Written or graphic document or Sample prepared for the Work by the Contractor or a Subcontractor or Supplier and submitted to the Authority by the Contractor, including Shop Drawings, Product Data, Samples, certificates, schedules of material, or other data.
44. Substantial Completion: Work or a portion thereof that has progressed to the point where it is sufficiently complete in accordance with the Contract Documents (including receipt of test and inspection reports) so that the Work, or a specified portion thereof, can be utilized for the purpose for which it is intended, and only incidental work remains for physical completion of the Work in accordance with the Contract Documents.
45. Substitution: An item offered by the Contractor of significant difference in material, equipment, or configuration, which functionally meets the requirements of the Contract Documents but is submitted in lieu of item specified therein.
46. Supplementary Conditions: The term Supplementary Conditions means modifications to the General Conditions for requirements unique to a specific project.

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47. Supplier: A Subcontractor who is a manufacturer, fabricator, supplier, distributor, or vendor having a contract with the Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work of the Contractor or any Subcontractor.
 48. Utility: A public and private facility or installation, other than a WMATA system facility, which relates to (1) the conveyance and supply of water, sewage, gas, chemicals, steam, petroleum products, and other piped installations, or (2) electrical energy, telephone, telegraph communications, radio, television, and cellular or wireless communications.
 49. Utility Standards: Drawings and specifications for Utilities published or issued by municipalities or Utility companies.
 50. WMATA CAD Manual: Document that establishes drafting criteria for drawings and electronic files that provide templates for drawing/plotter configuration to Bidders and Contractor.
 51. WMATA Manual of Design Criteria: Document that outlines the design criteria and process requirements that must be followed for the submittal of project information to WMATA, and measures that are required when constructing a project in the vicinity of, or impacting WMATA systems and facilities.
 52. WMATA Safety Manual: A compilation of the appropriate safety and reporting requirements for the Project as specified in Section 00370, WMATA SAFETY AND SECURITY REQUIREMENTS.
 53. WMATA Safety and Security Certification Program Plan: A compilation of the appropriate System safety and security certification requirements for the Project.
 54. Work: All design and construction services, including supervision, quality control and quality assurance, labor, materials, machinery, equipment, tools, supplies and facilities required to complete the Project, or the various separately identifiable parts thereof including but not limited to Safety, Security, System Safety Certification and Commissioning requirements, in accordance with the terms of the Contract.
 55. Working Days: As defined in the Contract Scope of Work (SOW)
 56. Working Drawings: Plans prepared by the Contractor for temporary structures such as decking, temporary bulkheads, support of excavation, support of utilities, groundwater control systems, and forming and falsework; for underpinning; and for such other work as may be required for construction but which do not become an integral part of the completed Project as specified in Section 01330, SUBMITTAL PROCEDURES.

00702 ORDER OF PRECEDENCE

- A. Any inconsistency in this invitation or Contract shall be resolved by giving precedence in the following order:
 1. Contract Modifications in Section 00900, AMENDMENTS AND MODIFICATIONS

2. Supplementary Conditions in Section 00800, SUPPLEMENTARY CONDITIONS.
 3. General Conditions in Section 00700, GENERAL CONDITIONS.
 4. General Requirements - Division 1
 5. Specifications
 6. Drawings
- B. In the event of a conflict within, between, or among the above listed order of precedence, the more stringent requirement shall apply. In addition, in the event this Contract is funded in whole or in part through funding provided by a Federal agency, such as the Federal Transit Administration (FTA), United States Department of Transportation (USDOT), Department of Homeland Security (DHS), etc., all contract terms mandated for inclusion by said federal agency shall be deemed to supersede any other conflicting or inconsistent provision of the Contract Documents, as applicable.

00703 GENERAL REQUIREMENTS, DRAWINGS, AND SPECIFICATIONS

- A. During the construction of the Project, the Contractor shall keep at the jobsite a copy of the Contract Documents. The Contractor shall at all times give the Contracting Officer Representative access thereto.
- B. The Sections of Division 1, General Requirements, procedures shall govern the execution of the Work of the Contract.
- C. Anything mentioned in the Contract Specifications and not shown on the Contract Drawings, or shown on the Contract Drawings and not mentioned in the Contract Specifications, shall be of like effect as if shown or mentioned in both.
- D. In case of discrepancy between the Contract Specifications and Contract Drawings, the Contract Specifications shall govern. In case of discrepancy among the figures within the Contract Drawings, the matter shall be promptly submitted in writing to the Contracting Officer Representative in accordance with Section 01330, SUBMITTAL PROCEDURES, who will promptly make a determination in writing. Notification of conflicts among the requirements and criteria either indicated in the Contract Specifications, Contract Drawings, or required by local, State, or Federal jurisdictions or Utilities, that affect the scope, cost, or quality of the Work, shall be promptly submitted in writing to the Contracting Officer Representative for a written determination in accordance with Section 01330, SUBMITTAL PROCEDURES. Any adjustment by the Contractor without such a determination shall be at the Contractor's own risk and expense.
- E. Wherever in the Specifications the imperative form is used such as the words "directed," "ordered," "designated," "prescribed," or words of like import, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription" of the Contracting Officer Representative is intended, and similarly the words "approved," "acceptable,"

“satisfactory,” or words of like import, shall mean “approved by,” “acceptable to,” or “satisfactory to” the Contracting Officer Representative.

- F. Should it appear that the Work to be performed is not sufficiently detailed or explained in the Contract Documents, then the Contractor shall promptly apply to the Contracting Officer Representative in writing in accordance with Section 01330, SUBMITTAL PROCEDURES, for such written explanations as may be necessary and shall conform to the explanation provided. The Contractor shall promptly notify the Contracting Officer Representative in accordance with Section 01330, SUBMITTAL PROCEDURES, of all errors, omissions, inconsistencies, or other defects including inaccuracies, which it may discover in the Contract Documents, and shall provide options to the Contracting Officer Representative to remedy such errors, omissions, or other defects, and shall obtain in writing from the Contracting Officer Representative specific instruction regarding any such error, omission, or defect before proceeding with the design work affected thereby. Omission of details of the Work from the Contract Documents or the mis-description of details of work, which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve the Contractor from performing such omitted work, no matter how extensive, or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Modification hereunder.

00704 INTENT OF CONTRACT

- A. The Contractor shall, upon execution of this Contract and receipt of the Notice to Proceed (NTP), perform all work as defined herein to complete the Project as described in this Contract.
- B. It is the intent of the Contract Documents to describe a functionally complete Project to be constructed in accordance with the Contract Documents. All work, materials, or equipment that may reasonably be inferred from the Contract Documents, from prevailing custom, or from trade usage as being required to produce the intended results will be furnished and performed whether or not specifically called for. Unless otherwise defined in the Contract, when words or phrases having a well-known technical, construction industry, or trade meaning are used to describe work, labor, services, materials, tools, or equipment, such words or phrases shall be interpreted in accordance with that meaning.
- C. The Contractor accepts the relationship of trust and confidence established between it and the Authority by the Contract. The Contractor agrees to furnish the architectural, engineering, and construction services set forth herein, and agrees to furnish efficient business administration and superintendence, including quality control and quality assurance, and use its best efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the requirements of the Contract Documents.
- D. The Contractor shall be responsible for performing or furnishing construction services and related services and require its Subcontractors to perform the services in accordance with the best general practice as specified in Section 01111, KEY CONTRACTOR STAFF. Only new materials and workmanship of best standard quality shall be used. Unless otherwise specified, the Contractor shall furnish all work, services, labor, materials, tools, equipment, and

incidentals, which are necessary to complete the Work in a proper, substantial, and workmanlike manner in accordance with the Contract Documents.

- E. Nothing contained in these Contract Documents shall create a contractual relationship between the Authority and any party other than the Contractor. However, it is understood and agreed that the Authority is an intended third party beneficiary of all contracts for design, engineering, or construction services and all such Subcontracts, purchase orders, and other agreements between the Contractor and third parties related to those services. The Contractor shall incorporate the obligations of this Contract into its respective Subcontracts, supply agreements, and purchase orders.

00705 LEGAL REQUIREMENTS

- A. The Contractor shall perform the Work in accordance with all Legal Requirements as specified in Section 01420, REFERENCES, and in Section 00706, PERMITS AND RESPONSIBILITIES. The Contract Price and Period of Performance will be adjusted to compensate the Contractor for the effects of changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work. Such effects may include, without limitation, revisions the Contractor is required to make to the Contract Documents because of changes in Legal Requirements.
- B. The Contractor's failure to construct the Work in conformance with all applicable Legal Requirements in force as of the Notice to Proceed shall not be the basis for a change to either the Contract Price or Period of Performance. The Contractor shall remedy all such failures construct the Work in conformance with all such Legal Requirements at its own expense.
- C. The Contractor shall be responsible for remaining informed of all changes in the Legal Requirements that may occur after the Notice to Proceed and shall perform the Work in accordance with such changed Legal Requirements.

00706 PERMITS AND RESPONSIBILITIES

- A. The Contractor shall, without additional expense to the Authority, be responsible for obtaining necessary licenses, permits not provided by the Authority, and easements and for complying with applicable International, Federal, State, local, or municipal laws, codes, or regulations in connection with the prosecution of the Work. Permits provided by the Authority are noted and attached in Section 00806, PERMITS AND RESPONSIBILITIES.
- B. The Contractor shall be responsible for understanding the requirements, review, and approval processes of the Project's related governmental and regulatory agencies. The Contractor acknowledges that governmental and regulatory agencies may require a significant amount of time to review, process, and approve permit applications. Consequently, the Contractor's Project Schedule shall include adequate time to address review of permits, and even then adjustments to the Contractor's work plan may be needed due to the actual requirements, review, processing, and inspection times.
- C. The Contractor further recognizes the necessity to schedule permit-related inspections well in advance and make all reasonable accommodation necessary to facilitate said inspections so as to avoid delay in progressing or completing the Work. Any delay resulting from the

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- Contractor's failure or tardiness in scheduling permit-related inspections of any kind will not be a basis for a delay Claim.
- D. For delays in obtaining the necessary permits, which exceed scheduled durations, are beyond the control and without the fault or negligence of the Contractor and will result in a delay of the commencement of work, the Contractor may be granted an extension of time for the performance of the Contract corresponding to the delay, provided the Contractor notifies the Contracting Officer Representative immediately upon first encountering the delay. The Contractor shall keep the Contracting Officer Representative informed as to the estimated length of the requested delay.
- E. The Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence or that of its Subcontractors or anyone directly or indirectly employed by the Contractor, or anyone for whose acts the Contractor may be liable, subject to an allocation or proportion of any such liability, loss, cost, or expense if caused in part by a party indemnified hereunder. The Contractor shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and Acceptance of the entire Work, except for any completed unit of construction thereof, which theretofore may have been Accepted in writing by the Authority.

00707 NOT USED

00708 REQUIREMENTS FOR PROFESSIONAL REGISTRATION

- A. All architecture, engineering, and other design services rendered by or through the Contractor under this Contract shall be accomplished, reviewed, and approved by Designers licensed to practice in the particular professional field involved in the jurisdiction in which the Project being designed will be constructed. The Contractor shall comply with local laws regarding the licensing of design firms and personnel providing services for the Project.

00709 PROJECT MANAGEMENT AND SUPERINTENDENCE AND KEY STAFF

- A. The Contractor shall provide project management and direct superintendence of the Work.
- B. The Contractor shall provide personnel for the positions specifically identified by the Authority in this Contract as required Key Staff, and for any other positions the Contractor deems necessary for the successful execution during performance of the Work. Also, see Section 01111, CONTRACTOR KEY STAFF, for responsibilities of key personnel. All positions shall be filled by competent personnel satisfactory to the Contracting Officer Representative. Each position shall be held by a separate full-time employee unless otherwise specifically approved by the Authority. Individuals holding these, or any key position, shall not be changed without permission of the Contracting Officer Representative. The Contractor shall acquire written Authority approval for substitutions of key personnel as specified in Section 01111, CONTRACTOR KEY STAFF. The Contractor shall provide the Authority with all information as may be reasonably requested regarding substitutions and proposed substitutions. The substitutions and proposed substitutions shall share similar or better qualities than the personnel being substituted. The Authority shall be entitled to satisfactory performance of all

services described in this Contract, and the Contractor shall promptly remove from the Project any employee or other person performing services hereunder in an unsatisfactory manner.

- C. The Contractor shall present, as specified in Section 00725, COMMENCING THE WORK, and Section 01111, CONTRACTOR KEY STAFF, credentials of the Key Staff to the Contracting Officer Representative for the Contracting Officer Representative's review and acceptance in accordance with Section 01330, SUBMITTAL PROCEDURES.

00710 WORK BY CONTRACTOR

- A. The Contractor shall perform, with its own organization, work equivalent to at least the percentage specified in Section 00810, WORK BY CONTRACTOR, for the construction work.
- B. The percentage shall be determined by the dollar value of the construction work done by its own organization in comparison to total value of construction work in the Contract. The cost of the work performed by skilled and unskilled labor carried on the Contractor's own payroll, together with the cost of materials installed, may be included in the above percentage. The Contractor's markup for overhead and profit on work performed by Subcontractors shall not be included in determining the percentage.
- C. If, during the progress of the Work, the Contractor requests a reduction in such percentage, and if the Contracting Officer Representative determines that it would be to the Authority's advantage, the Contracting Officer Representative may approve such a reduction at its sole discretion.

00711 SUBCONTRACTOR AGREEMENTS

- A. After Contract award, the Contractor will be required to submit copies of a conformed and signed Subcontract agreements with all Subcontractors to be used on the Contract to the Contracting Officer or designee with the price deleted. The terms of payment shall be in conformance with Section 00744, Method of Payment. The Divisions or Sections of the Specifications are not intended to control the Contractor in dividing the Work among Subcontractors or to limit the Work performed by a trade.
 - 1. The Contractor shall not enter into Subcontracts totaling in amount more than the percentage of the total Contract Price permissible under Section 00710, WORK BY CONTRACTOR, without the written permission of the Contracting Officer.
 - 2. No Subcontractor will be permitted to perform work at the Site until the Subcontractor, or the Design-Builder, in compliance with the provisions of Section 00777, INDEMNIFICATION AND INSURANCE REQUIREMENTS, has furnished satisfactory evidence of insurance as required.
 - 3. The Authority or its representatives will not undertake to settle any difference between the Contractor and its Subcontractor or between Subcontractors.

00712 OTHER CONTRACTS

- A. The Authority may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Authority employees and carefully fit its own work to such additional work as may be directed by the Contracting Officer

Representative. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other contractor or by Authority employees.

- B. The Contractor shall conduct all work in a manner that will minimize interference with the operations of other contractors and Authority employees, if any, involved in the performance of related work. All work shall be brought to a stage of completion that will conform to the Contract Documents.

00713 CONFIDENTIALITY

- A. The Contractor or its Subcontractors shall not divulge any confidential information, which is so designated by the Authority to Contractor or its Subcontractors or acquired in the course of performance of the Work under this Contract.

00714 CONDITIONS AFFECTING THE WORK

- A. The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work, and the general and local conditions, which can affect the Work or the cost thereof as described in Section 01711, ACCEPTANCE OF CONDITIONS. Any failure by the Contractor to do so will not relieve the Contractor from responsibility for successfully performing work without additional expense to the Authority. The Authority assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.

00715 SITE INVESTIGATION

- A. The Contractor acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work including, but not restricted to, those bearing upon transportation, disposal, handling, and storage of materials; availability of labor, water, electric power, and roads; and uncertainties of weather, river stages, tides, or similar physical conditions at the Site, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the Work as described in Section 01711, ACCEPTANCE OF CONDITIONS. The Contractor further acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory work done by the Authority, as well as from information provided by the Authority and made a part of this Contract, the character and extent of existing work within or adjacent thereto, and any other work being performed thereon at the time of the submission of its Bid as described in Section 01711, ACCEPTANCE OF CONDITIONS. Nothing in this requirement shall be construed as being determinative of the character, scope, or extent of the Work required under this Contract. Any failure by the Contractor to acquaint itself with the available information will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The Authority assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Authority.

00716 PRECONSTRUCTION INSPECTION

- A. Conditional inspection of buildings or structures in the immediate vicinity of the Project, which may reasonably be expected to be affected by the Work, will be performed by and be the responsibility of the Contractor.
- B. Prior to beginning excavation or any other work, the Contractor shall inform the Authority of buildings or structures on which it intends to perform work or which performance of the Work will affect.
- C. The Authority shall be provided sufficient notice of this inspection and afforded an opportunity to participate in the inspection. The Contractor shall submit for Approval the preconstruction inspection records as specified in Section 01711, ACCEPTANCE OF CONDITIONS, to the Authority prior to beginning work.

00717 DIFFERING SITE CONDITIONS

- A. The Contractor shall promptly, and before such conditions are disturbed, notify in writing as described in Section 01711, ACCEPTANCE OF CONDITIONS, the Contracting Officer, through the Contracting Officer Representative, of subsurface or latent physical conditions at the Site differing materially from those indicated in this Contract or 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 this Contract .
- B. The Contracting Officer Representative will promptly investigate the conditions, and if the Contracting Officer Representative finds that such conditions do materially so differ and cause an increase or decrease, in the Contractor's cost of, or the time required for, performance of any part of the Work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment will be made and the Contract modified in writing accordingly.
- C. No claim of the Contractor under this Section will be allowed unless the Contractor has given the notice required in Paragraph A above; provided, however, the time prescribed therefore may be extended by the Contracting Officer Representative.
- D. No claim by the Contractor for an equitable adjustment hereunder will be allowed if asserted after Final Payment under this Contract.

00718 ROLE OF THE AUTHORITY

- A. The character and extent of the Work to be performed by the Contractor shall be subject to the general oversight and general approval of the Authority.
- B. The Authority will not supervise, direct, or have control over, or be responsible for, the Contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incidental to the Work, or for any failure of the Contractor to comply with Legal Requirements as specified in Section 00705, LEGAL REQUIREMENTS. The Authority will not be responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

00719 AUTHORITY REVIEWS

- A. The Authority will review information submitted by the Contractor, furnish required information and required approvals, and render decisions pertaining thereto, all in a timely manner in order to facilitate the orderly progress of the Work in cooperation with the Contractor and in accordance with the planning, scheduling, and budgetary requirements and constraints of the Project.
- B. The Authority will review and Approve Submittals solely for the purpose of establishing their conformance to the Contract Documents. Such review and Approval shall not be deemed to transfer any liability from the Contractor to the Authority.
- C. The Authority will review and Approve identified construction Submittals solely to determine if the items covered by the Submittal will, after installation or incorporation in the construction, conform to the requirements set forth in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Construction Submittals requiring Authority review and Approval are specified in Contract Specifications. Construction Submittals not so specified shall be submitted to the Authority for information only. The Authority's review and Approval of construction Submittals will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by these Contract Documents) or to safety precautions or programs incidental thereto. The Authority's Approval will be general and shall not be construed as: (1) permitting any departure from the Contract Documents; (2) relieving the Contractor of the responsibility for any errors including details, dimensions, and materials; or, (3) approving departures from details furnished by the Contractor or the Authority except as otherwise specified.
- D. The Authority reserves the right to review Submittals and to disapprove any Submittal when, in its sole judgment, the Submittal deviates from the requirements of the Contract Documents and compromises the integrity of the construction element. The Authority's review, Approval, or acceptance of any Submittal required under this Contract shall not be construed to operate as a waiver of the Contractor's responsibility for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, construction, and other services provided by the Contractor under this Contract.
- E. For the Authority's procedures for reviewing and approving Submittals, refer to Section 01330, SUBMITTAL PROCEDURES, and Section 01775, CLOSEOUT.

00720 SUBMITTALS

- A. The Contractor shall Submit for review and approval a preliminary Schedule of Required Submittals, as described in Section 01330, SUBMITTAL PROCEDURES, that the Authority reserves the right to review and Approve, and the times for submitting, reviewing, and processing each Submittal.
- B. The Contractor shall maintain a Contract Document Submittal Log as described in Section 01330, SUBMITTAL PROCEDURES, to show the status of all Submittals. The submittal log and all Approved Submittals shall be kept at the Project Site and shall at all times be made available for Authority inspection. Approved Submittals and certificates shall be turned over to the Authority at the completion of the Project as part of the Project records in accordance with Section 01775, CLOSEOUT.
- C. The Authority will, in a timely manner, review and Approve those Submittals that it deems necessary and as described in Section 01330, SUBMITTAL PROCEDURES, and Section 01775 CLOSEOUT, during the construction and closeout of the Project. The Authority's review of Submittals shall be solely for the purposes stated in Section 00719, AUTHORITY REVIEWS. The Authority's review and Approval of separate items, as such, will not indicate Approval of the assembly in which the item functions. The Contractor shall make corrections to Submittals as required and shall return corrected copy for additional review and Approval.
- D. The Authority's review and Approval of any Submittal that it deems necessary to review and Approve will not relieve the Contractor from responsibility for any variations from the requirements of the Contract Documents unless the Contractor has in writing called the Authority's attention to each such variation at the time of submission in the Submittal letter of transmittal, and the Authority has given written Approval of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.
- E. Where a Submittal is required by the Contract Documents, any related work provided prior to the appropriate review and Approval of a Submittal shall be at the sole risk, expense, and responsibility of Contractor.

00721 VALUE ENGINEERING INCENTIVE

- A. This Section applies to those Value Engineering Change Proposals (VECPs), which are initiated and developed by the Contractor during the performance of the Contract to modify requirements of this Contract. In order to be accepted under this Section, each VECP shall:
 - 1. Be identified by the Contractor at the time of submittal to the Contracting Officer Representative as submitted pursuant to this Section using the prescribed Authority VECP Proposal form;
 - 2. Require a significant change to this Contract;
 - 3. Decrease the Contract Price;

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4. Maintain the Contract requirements such as safety, service life, reliability, economy of operation, ease of maintenance, and necessary standardized and architectural features of the facility or system;
 5. Not require an unacceptable extension of original Period of Performance; and
 6. Be reviewed and evaluated by way of a two-phase process.
- B. Phase One - Conditional Approval: In addition to the use of the Authority VECP Proposal form, all VECPs the Contractor submits shall be in sufficient detail to clearly define the proposed change including the following items:
1. A description of the difference between the existing and the proposed Contract requirements and the comparative advantages and disadvantages of each;
 2. Contract requirements recommended by the Contractor to be changed;
 3. Separate detailed cost estimates for both the basic Contract requirement and the proposed change, and an estimate of the change in Contract Price including an accounting of the costs of development and implementation and Authority review of the VECP and the sharing arrangement as set forth in the following Paragraph E;
 4. A statement from the Contractor predicting all effects the proposed VECP will have on the life-cycle cost of the Work to include and identify separately the cost for increased or decreased maintenance and operations;
 5. A statement of the time by which the proposal must be accepted so as to obtain the maximum price reduction affect and not delay the original Period of Performance. The time required for VECP review shall be considered and included in this statement and in a separate bar chart;
 6. A list of codes and the Authority standards applicable to the work to be carried out by the VECP and a statement that the proposed VECP will be in compliance with the requirements set forth in listed codes and standards;
 7. The identification of a project where the materials, methods of construction, and special equipment where required, and have been previously and successfully performed on construction similar to that which is being proposed for implementation on this Contract;
 8. Preliminary architectural and engineering analysis, including calculations and 11 x 17-inch drawings in sufficient detail for each requirement of the Contract, which must be changed if the VECP is accepted, with recommendations for accomplishing each change and its affect on unchanged work.
- C. The Contracting Officer Representative may at any time during the two-phase review and evaluation process reject part or all of the VECP by giving the Contractor written notice thereof. Until final approval is issued, the Contractor shall remain obligated to perform in accordance with the terms of the original Contract. VECPs will be processed expeditiously, however, the Authority shall not be liable for any delay in acting upon any proposal submitted

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- pursuant to this Section. The decision of the Contracting Officer Representative about acceptance or rejection of any such proposal shall be final and shall not be subject to Section 00730, DISPUTE RESOLUTION.
1. The Contractor has the right to withdraw part or all of the VECP at any time prior to acceptance or rejection by the Authority. Such withdrawal shall be made in writing to the Contracting Officer through the Contracting Officer Representative. If the Contractor desires to withdraw the proposal, it shall be liable for the cost incurred by the Authority in reviewing the proposal.
- D. Upon notice of conditional approval of the concept of the VECP, the Contractor shall proceed with final VECP design in accordance with the agreed schedule.
- E. Phase Two - Final Approval: Final Approval of the VECP by the Authority will be contingent upon the following items:
1. The Contractor shall address, to the Authority's satisfaction, all design issues and review comments and submit the VECP to the Authority for Approval.
 2. An equitable adjustment in the Contract Price and appropriate changes in all other affected provisions of the Contract shall be made, and the Contract will be modified in accordance with Section 00748, CHANGES, or other applicable Sections of this Contract.
 3. The net savings resulting from the change shall be shared between the Contractor and the Authority on the basis of 50 percent for the Contractor and 50 percent for the Authority. Net savings shall be determined by deducting from the estimated gross savings, the Contractor's costs of developing and implementing the proposal, including any amount attributable to a Subcontractor and the estimated amount of increased costs to the Authority resulting from the change, such as costs for review, implementation, inspection, related items, and Authority-furnished property. Estimated gross savings shall include Contractor's labor, material, equipment, overhead, profit, and bond. The Contract Price shall be reduced by the sum of the Authority's costs and share of the net savings.
 4. The Contractor is entitled to share in instant contract savings only, to the full extent provided for in this Section. For purposes of sharing, the term 'instant contract' shall not include any supplemental agreements to or other Modifications of this Contract, executed subsequent to acceptance of the particular VECP, by which the Authority increases the quantity of any item or adds any item.
 5. Notwithstanding any review, Approval, or acceptance of any VECP by the Authority, the Contractor agrees to be liable to the Authority for all costs of any kind whatsoever caused by or resulting from any error, omission, deficiency, negligence, or combination thereof, of any kind in the design, drawings, or specifications submitted to the Authority in connection with any VECP proposal under this Contract. The rights and remedies of the Authority provided in this Section are in addition to any other rights or remedies provided by law or under this Contract.
- F. The Contractor shall use its best efforts to include Value Engineering arrangements in any Subcontract, which in its judgment, appears to offer sufficient value engineering potential.

- G. A VECP identical to one submitted under any other contract, by this or any other contractor, may also be submitted under this Contract.
- H. The Contractor may restrict the Authority's right to use any VECP data by marking it with the following statement:
 - 1. "This data, furnished pursuant to the VALUE ENGINEERING INCENTIVE Section of this Contract, shall not be duplicated, used, or disclosed, in whole or in part, for any purpose except to evaluate the VECP, unless the proposal is accepted by the Authority. This restriction does not limit the Authority's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from other source, without limitations. When this proposal is accepted by the Authority, the Authority shall have the right to duplicate, use, and disclose any data in any manner and for any purpose whatsoever, and have others do so whether under this or any other Authority contract."

00722 QUALITY ASSURANCE / QUALITY CONTROL

- A. The Contractor shall be responsible for conducting an ongoing Quality Plan as described in Section 01470, QUALITY MANAGEMENT SYSTEM, during the entire term of the Contract based on the approved detailed Quality Plan. The purpose of the Quality Plan is to effectively and economically ensure technical quality in deliverables and construction of the Work, thus reducing the potential for:
 - 1. Adverse construction schedule and cost impacts;
 - 2. Personal and public safety problems and incidents and their attendant costs;
 - 3. Those operational and maintenance problems, disruptions, and costs that result from design errors and omissions;
 - 4. Poor construction quality, and
 - 5. Deliverables and completed work, which do not comply with applicable codes and regulations.
- B. Submit for Approval in accordance with Section 01330, SUBMITTAL PROCEDURES, all required quality Submittals as specified in Section 01470, QUALITY MANAGEMENT SYSTEM.
- C. An effective Quality Program is fundamental to all work performed by the Contractor and will be considered by the Authority in assessing the Contractor's progress, performance, and earnings entitlement.

00723 PROGRESS SCHEDULES AND REQUIREMENTS FOR MAINTAINING PROGRESS RECORDS

- A. Progress Schedules. Prepare and submit to the Contracting Officer Representative for Approval schedules showing the order in which the Contractor proposes to carry on the Work, the dates on which it will start the several major features of the Work, including procurement of materials, plant, and equipment, and the contemplated dates for completing the same for construction. The schedules shall be in a form acceptable to the Authority, and as described in Section 01322, CONTRACT PROGRESS REPORTING, and shall be in such detail that, in conjunction with the progress reports hereinafter required, the Authority will be able to chart the status and progress of the Work while it is being performed. If actual progress deviates from the schedule, update the schedule to show the accurate progress. Failure to comply with the terms of this Section may affect the processing of progress payment requests submitted by the Contractor as provided for in this Contract.
- B. If, in the opinion of the Contracting Officer Representative, the Contractor falls significantly behind the Approved progress schedule for construction, take any and all steps necessary to improve the progress of the Work. In this event, without cost to the Authority, the Contracting Officer Representative may require the Contractor to submit for Approval supplemental progress schedules detailing the specific operational changes to be instituted to regain the Approved schedule. Additionally, the Contracting Officer Representative may require the Contractor to increase the number of shifts, initiate or increase overtime operations, increase days of work in the work week, or increase the amount of construction plant. Such requirements by the Authority shall not be construed or interpreted in such a way as to infer that the Authority is in any way responsible for the means, methods, or sequencing of the Work. The additional cost of such requirements shall be borne solely by the Contractor.
- C. Failure of the Contractor to comply with the requirements of the Contracting Officer Representative under this Section shall be grounds for determination that the Contractor is not prosecuting the Work with such diligence as will ensure completion within the time specified. Upon such determination, the Authority may terminate the Contractor's right to proceed with the Work, or any separate part thereof, in accordance with Section 00727, TERMINATION FOR DEFAULT, DAMAGES FOR DELAY, AND TIME EXTENSIONS.

00724 PERIOD OF PERFORMANCE AND PROJECT SCHEDULE

- A. Perform, complete, and advance all work under this Contract in accordance with the schedule set out in Section 00824, PERIOD OF PERFORMANCE AND PROJECT SCHEDULE.
- B. The Authority may modify the Contract, pursuant to Section 00748, CHANGES, to extend the Period of Performance as often and in periods as deemed necessary until completion of the Work under this Contract.
- C. Early Completion: If the Contractor submits a schedule or expresses an intention to complete the Work earlier than any required milestone, interim, or final completion date, the Authority shall not be liable for any costs incurred because of delay or hindrance should the Contractor be unable to complete the Work before such milestone, interim, or final completion date. The duties, obligations, and warranties of the Authority to the Contractor shall be consistent with and applicable only to the completion of the Work and completion dates set forth in this Contract.

00725 COMMENCING THE WORK

- A. Commence the Work within 10 Days after the date of receipt of the Notice to Proceed (NTP) and prosecute the Work diligently to complete it within the time specified in the Contract to meet all specified interim milestone dates.
- B. A Pre-Construction Conference attended by the Authority and the Contractor and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules, procedures for handling Submittals, processing Applications for Payment, maintaining required records, quality control, and other matters. For a more complete agenda, refer to Section 01312, PROJECT MEETINGS.
- C. The following items require approval prior to commencement of construction activities, or offsite fabrication associated with the Project. Submit in accordance with Section 01330, SUBMITTAL PROCEDURES:
 - 1. Executed Contract as specified in Section 00521, CONSTRUCTION CONTRACT FORM, with Power of Attorney as specified in Section 00541, POWER OF ATTORNEY, and Power of Execution as specified in Section 00542, POWER OF EXECUTION; Required Performance Bond as specified in Section 00611, PERFORMANCE BOND, and Payment Bond, as specified in Section 00612, PAYMENT BOND; Insurance Certificates as specified in Section 00778, INDEMNIFICATION AND INSURANCE REQUIREMENTS, within 10 Days after Award of Contract.
 - 2. Major Subcontractors and Key Project Personnel Confirmation as specified in Section 00709, PROJECT MANAGEMENT AND SUPERINTENDENCE AND KEY PERSONNEL, and Section 01111, CONTRACTOR KEY STAFF, within 10 Days after Award of Contract.

00726 SUSPENSION OF WORK

- A. The Authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period as it may determine to be appropriate for the convenience of the Authority.
- B. If the performance of all or any part of the Work is, for an unreasonable period, suspended, delayed, or interrupted by an act of the Contracting Officer or other delegated Contracting Officer's Representative in the administration of this Contract, or by its failure to act within the time specified in this Contract, or if no time is specified, within a reasonable time, an adjustment will be made for any increase in the cost of performance of this Contract, excluding profit, necessarily caused by such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no adjustment will be made under this Section for any suspension, delay, or interruption to the extent:
 - 1. that performance would have been so suspended, delayed, 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 this Contract.

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- C. No Claim under this Section will be allowed:
1. For any costs incurred more than 20 Days before the Contractor shall have notified the Contracting Officer or other delegated Contracting Officer's Representative in writing of the act or failure to act involved, but this requirement will not apply as to a Claim resulting from a suspension order, and
 2. Unless the Claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but no later than the date of Final Payment under this Contract.
- D. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of Section 00730, DISPUTE RESOLUTION.

00727 TERMINATION FOR DEFAULT, DAMAGES FOR DELAY, AND TIME EXTENSIONS

- A. If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said Work within such time, the Contracting Officer may, by written notice to the Contractor, terminate its right to proceed with the Work or such part of the Work as to which there has been delay. In such event, the Contracting Officer may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the Work such design product, materials, appliances, plant, and other work product as may be on the Site of the Work and necessary therefore, all of which shall become the property of the Authority. Whether or not the Contractor's right to proceed with the Work is terminated, the Contractor and its sureties shall be liable for all damage to the Authority resulting from its refusal or failure to complete the Work in the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract, and if the Contracting Officer so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until such reasonable time as may be required for final completion of the Work together with any increased costs occasioned the Authority in completing the Work.
- C. If fixed and agreed liquidated damages are provided in the Contract, and if the Contracting Officer does not so terminate the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until the Work is completed or accepted.
- D. The Contractor's right to proceed shall not be so terminated or the Contractor charged with resulting damage under the following circumstances:
1. If the delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the Authority in its contractual capacity, acts of another contractor in the performance of a contract with the Authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of Subcontractors or Suppliers at any tier arising from causes other

than normal weather beyond the control and without the fault or negligence of both the Contractor and such Subcontractors or Suppliers.

a. Unusually severe weather conditions:

- 1) Pursuant to Paragraph D.1 above, the Authority will use the following table as the basis for determining allowable time extensions to the Contract for unusually severe weather conditions and the impact of such weather at the construction Site.
- 2) The column below labeled WORKING DAYS represents working-day delays, which may be expected in each month named within the Washington Metropolitan Area, based on a 5-day work week:

<u>Month</u>	<u>Working Days</u>
January	4
February	4
March	4
April	5
May	5
June	2
July	2
August	3
September	2
October	3
November	4
December	4

- 3) Time extensions for weather delays during a given month will be allowed only for actual working days in excess of the numbers listed above and only when those excess days of delay affect the current critical path(s) leading to specified Contract completion or milestone dates.
2. If the Contractor, within 10 Days from the beginning of any such delay, unless the Contracting Officer grants a further period before the date of Final Payment under the Contract, notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer will ascertain the facts and the extent of the delay and extend the time for completing the Work when, in the Contracting Officer's judgment, the findings of fact justify such an extension. The Contracting Officer's findings of fact shall be final and conclusive on the parties, subject only to appeal as provided Section 00729, DISPUTE RESOLUTION.
 3. If, after notice of termination of the Contractor's right to proceed under the provisions of this Section, it is determined for any reason that the Contractor was not in default under the provisions of this Section, or that the delay was excusable under the provisions of this Section, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 00728, TERMINATION FOR CONVENIENCE OF THE AUTHORITY.

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4. The rights and remedies of the Authority provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

00728 TERMINATION FOR THE CONVENIENCE OF THE AUTHORITY

- A. The Authority may terminate this Contract in whole or, from time to time, in part, for the convenience of the Authority. The performance of work under this Contract may be terminated by the Authority in accordance with this subsection, in whole, or from time to time in part, whenever the Contracting Officer determines that such termination is in the best interest of the Authority. Any such termination will be effected by delivery to the Contractor of a Notice of Termination specifying the nature, extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.
- B. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer:
 1. Immediately discontinue all services and stop work under the Contract on the date and to the extent specified in the Notice of Termination;
 2. Place no further orders or Subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
 3. Terminate all orders and Subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 4. Assign to the Authority, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and Subcontracts so terminated, in which case the Contracting Officer shall have the right to settle or authorize payments on any or all Claims arising out of the termination of such orders and Subcontracts;
 5. Settle all outstanding liabilities and all Claims arising out of such termination of orders and Subcontracts, with the approval or ratification of the Contracting Officer, to the extent it may require, which approval or ratification shall be final for all the purposes of this Section;
 6. Transfer title and deliver the following to the Authority in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:
 - a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material procured as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination.
 - b. All data, record drawings and specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.

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7. Use best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in Paragraph B.6 above, provided, however, that the Contractor:
 - a. Will not be required to extend credit to any purchaser, and
 - b. May acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Authority to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Contracting Officer may direct.
 8. Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
 9. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor and in which the Authority has or may acquire an interest.
- C. After receipt of a Notice of Termination, submit to the Contracting Officer through the Contracting Officer Representative its termination Claim in the form and with certification prescribed by the Contracting Officer. Such Claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such 1-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, the Contracting Officer may receive and act upon any such termination Claim at any time after such 1-year period or any extension thereof. Upon failure of the Contractor to submit its termination Claim within the time allowed, the Contracting Officer may determine, on the basis of information available to the Contracting Officer, the amount, if any, due to the Contractor by reason of the termination and shall thereupon authorize payment to the Contractor the amount so determined.
- D. Subject to the provisions of Paragraph C above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Section, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of work not terminated. The foregoing notwithstanding, the Contracting Officer will not allow anticipated profit on services not performed by the Contractor.
- E. The Contract shall be amended accordingly, and the Contractor will be paid the agreed amount. Nothing in Paragraph F below, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Section, will be deemed to limit, restrict, or otherwise determine or affect the amount or amounts, which may be agreed upon to be paid to the Contractor pursuant to Paragraph D above.

- F. In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in Paragraph D above, upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Section, the Contracting Officer will authorize payment to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with Paragraph D:
1. With respect to all Contract Work performed prior to the effective date of the Notice of Termination, the total, without duplication of any items, of the following:
 - a. The cost of such Work;
 - b. The cost of settling and paying Claims arising out of the termination of work under Subcontracts or orders as provided in Paragraph B.5 above, exclusive of the amount paid or payable on account of supplies or materials delivered or services furnished by the Subcontractors or Suppliers prior to the effective date of Notice of Termination of work under this Contract, which amounts shall be included in the cost on account of which payment is made under Paragraph D above; and
 - c. A sum, as profit on Paragraph D above, determined by the Contracting Officer to be fair and reasonable, provided, however, that the Contracting Officer allows no anticipated profit on design services not performed by the Contractor, and, further, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit will be included or allowed, and an appropriate adjustment will be made reducing the amount of the settlements to reflect the indicated rate of loss; and
 2. The reasonable cost of the preservation and protection of property incurred pursuant to Paragraph B.9 above; and any other reasonable cost incidental to termination of work under this Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this Contract.
- G. The total sum to be paid to the Contractor under Paragraph F above shall not exceed the total Contract Price as reduced by the amount of payments made and as further reduced by the Contract Price of work not terminated. Except for normal spoilage, and except to the extent that the Contracting Officer shall have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to the Contractor under this Section 00728, TERMINATION FOR THE CONVENIENCE OF THE AUTHORITY, the fair value, as determined by the Contracting Officer, of property, which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Authority, or to a buyer pursuant to Paragraph B.7 above.
- H. The Contractor shall have the right of appeal, under Section 00730, DISPUTE RESOLUTION, from any determination made by the Contracting Officer under Paragraphs C or E above, except that if the Contractor has failed to Submit its Claim within the time provided in Paragraph C above and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under Paragraphs C or E above, the Authority will pay to the Contractor the following:

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1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or
 2. If an appeal has been taken, the amount finally determined on such appeal.
- I. In arriving at the amount due the Contractor under this Section, the following will be deducted:
 1. All un-liquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract.
 2. Any claim, which the Authority may have against the Contractor in connection with this Contract.
 3. The agreed price for, or the proceeds from sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this Section, and not otherwise recovered by or credited to the Authority.
 - J. If the termination hereunder be partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the Contracting Officer Representative, a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract, i.e., the portion not terminated by the Notice of Termination, and such equitable adjustment as may be agreed upon shall be made in such price or prices in accordance with Section 01330, SUBMITTAL PROCEDURES.
 - K. The Authority may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section, such excess shall be payable by the Contractor to the Authority upon demand for the period from the date such excess payment is received by the Contractor to the date on which such excess payment is repaid to the Authority upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess payment is repaid to the Authority; provided, however, that no interest shall be charged with respect to any such excess, payment attributable to a reduction or other disposition of termination inventory until 10 Days after date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.
 - L. Unless otherwise provided for in this Contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of 3 years after final settlement under this Contract, shall preserve and make available to the Authority at all reasonable times at the office of the Contractor but without direct charge to the Authority, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work terminated hereunder, or to the extent determined by the Contracting Officer, photographs, microphotographs, or other authentic reproduction thereof.

00729 ASSIGNMENT

- A. The Contractor shall not transfer or assign this Agreement or any portion thereof or any of the rights and obligations of the Contract to any other party. The Contracting Officer may recognize a third party as successor in interest to the Contract where the third party's interest is incidental to the transfer of all the assets of the Contractor, i.e., sales of assets, transfer of assets pursuant to merger or consolidation, or incorporation of a proprietorship or partnership. Such recognition of the transfer shall be within the sole discretion of the Authority after review of the facts and circumstances surrounding each request submitted in accordance with Section 01330, SUBMITTAL PROCEDURES, but the assignment will not be approved unless the surety, in writing, agrees to that assignment and accepts the assignee as the Contractor and principal on the payment and performance bonds.
- B. If this Contract provides for payments aggregating \$1,000 or more, Claims for moneys due or to become due the Contractor from the Authority, this Contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Notice of such assignment shall be made to the Contracting Officer and submitted through the Contracting Officer Representative in accordance with Section 01330, SUBMITTAL PROCEDURES, but the assignment will not be approved unless the surety, in writing, agrees to that assignment and accepts the assignee as the Contractor and principal on the payment and performance bonds. Such assignment or reassignment shall cover all amounts payable under this Contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made one party as agent or trustee for two or more parties participating in such financing. It is the Authority's intent to recognize assignments only to bona fide lending institutions; therefore, assignment to any private corporation, business, or individual, which does not qualify as such, is specifically prohibited.
- C. Any attempt to transfer by assignment not authorized by this Section shall constitute a breach of the Contract, and the Contracting Officer may for such cause terminate the right of the Contractor to proceed as provided in Section 00726, TERMINATION FOR DEFAULT, DAMAGES FOR DELAY AND TIME EXTENSIONS, and the Contractor and its sureties shall be liable to the Authority for excess costs incurred by the Authority.

00730 DISPUTE RESOLUTION

- A. Except as otherwise provided in this Contract, any dispute arising under or related to this Contract including allegations of breach of contract or similar allegations, which are not disposed of by agreement, will be decided by the Contracting Officer, who will reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer is final and conclusive unless, within 30 Days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written notice of appeal in accordance with Section 01330, SUBMITTAL PROCEDURES, addressed to the Authority Board of Directors. Such notice shall indicate that an appeal is intended and shall reference the decision and Contract number. The decision of the Board of Directors or its duly authorized representative for the determination of such appeals shall be final and conclusive unless in proceedings initiated by either party for review of such decision in a court of competent jurisdiction, the court determines the decision to have been

fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding under this Section, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision. The Armed Services Board of Contract Appeals is the authorized representative of the Board of Directors for finally deciding appeals to the same extent as could the Board of Directors.

- B. This Section does not preclude consideration of questions of law in connection with decisions provided for in Paragraph A above. Nothing in this Contract, however, shall be construed as making final the decisions of the Board of Directors or its representative on a question of law.

00731 USE AND POSSESSION PRIOR TO COMPLETION

- A. The Authority shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the Contract. While the Authority is in such possession, the Contractor, notwithstanding the provisions of Section 00706, PERMITS AND RESPONSIBILITIES, will be relieved of the responsibility for loss or damage to the Work other than that resulting from the Contractor's fault or negligence or that of its Subcontractors or agents. If such prior possession or use by the Authority delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the Contract Price or the time of completion will be made and the Contract shall be modified in writing accordingly.

00732 ACCEPTANCE AND INSPECTION OF WORK

- A. "Acceptance," as used in this Section, means the act of the Contracting Officer Representative by which the Authority approves specific services as partial or complete performance of the Contract. As used in this Section, "Correction" means the elimination of a defect.
- B. Unless otherwise provided in this Contract, Acceptance by the Authority will be made as promptly as practicable after completion and inspection of all Work required by this Contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards to the Authority's right under any warranty or guarantee. All Punch List items identified during final inspections and noted at the time of Acceptance shall be corrected by the Contractor as soon as is practicable as specified in Section 01775, CLOSEOUT.
- C. The Contracting Officer Representative will give written notices of defects or non-conformances to the Contractor if and when discovered, but no later than Acceptance of the construction work designed under this Contract as specified in Section 01775, CLOSEOUT, except for latent defects, which may be discovered following such Acceptance. This notice will state either:
 - 1. That the Contractor shall correct or re-perform defective or nonconforming services; or,

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2. That the Authority does not require correction or re-performance. The Contractor shall be liable to the Authority for all costs incurred of any kind caused by or resulting from the Contractor's defective workmanship or noncompliance with the Contract Documents.
- D. Should it be considered necessary or advisable by the Contractor or Authority at any time before Acceptance of the entire Work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction and pay all delay damages. If, however, such work is found to meet the requirements of the Contract Documents, an equitable adjustment will be made in the Contract Price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the Work has been delayed thereby, the Contractor will, in addition, be granted a suitable extension of time.
- E. All Work, which term includes but is not restricted to materials, workmanship, and manufacture and fabrication of components, shall be subject to inspection and test by the Authority, if it so deems, at all reasonable times prior to Acceptance as specified in Section 01470, QUALITY MANAGEMENT SYSTEM, and Section 01820, DEMONSTRATION AND TRAINING. Any such inspection and testing is for the sole benefit of the Authority and shall not relieve the Contractor of the responsibility of providing quality control measures to ensure that the Work strictly complies with the Contract Documents. No inspection or test by the Authority shall be construed as constituting or implying Acceptance. Inspection or testing shall not relieve the Contractor of responsibility for damage to or loss of the material prior to Acceptance, or in any way affect the continuing rights of the Authority after Acceptance of the completed Work.
- F. The Contractor shall furnish promptly, without additional charge, all services, work, labor, materials, tools, equipment, and facilities reasonably needed for performing such safe and convenient inspections and tests as may be required. All inspections and tests will be performed in such manner as not to unnecessarily delay the Work. The Authority shall receive adequate advance notice submitted in accordance with Section 01330, SUBMITTAL PROCEDURES, to conduct inspections and witness all tests as part of its overall quality oversight of the Project as specified in Section 01470, QUALITY MANAGEMENT SYSTEM, and Section 01820, DEMONSTRATION AND TRAINING. Tests performed that the Authority does not witness, due to the Contractor's failure to provide timely notice to the Authority of such tests, shall have no effect. Special, full scale and performance tests shall be performed as described in the Contract Documents.
- G. If the Contractor is required to correct or re-perform, it shall be without additional cost or fee to the Authority, and services corrected or re-performed by the Contractor shall be subject to this Section to the same extent as work initially performed. If the Contractor fails or refuses to correct or revise errors or deficiencies in its performance within 30 Days of the Authority's request, the Authority may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost incurred by the Authority thereby, or make an equitable adjustment to the Contract Price.

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- H. Failure to agree to the responsibility for costs, either those incurred by the Contractor or by the Authority, for corrective actions required by this Section, shall constitute a dispute and shall be subject to the provisions of Section 00730, DISPUTE RESOLUTION.
 - I. The rights and remedies of the Authority provided in this Section are in addition to any other rights or remedies provided by law or under this Contract.
 - J. The Contractor shall give the Contracting Officer Representative at least 14 Days advance notice of the date the Work, or separate portion thereof, will be fully completed and ready for final inspection, testing, and Acceptance as specified in Section 01470, QUALITY MANAGEMENT SYSTEM, Section 01775, CLOSEOUT, and Section 01820, DEMONSTRATION AND TRAINING.

00733 AUTHORITY-FURNISHED PROPERTY

- A. The Authority will make available to the Contractor, for use only in connection with this Contract, the property, if any, described in the Section 00833, AUTHORITY-FURNISHED PROPERTY, hereinafter referred to as Authority-furnished property, at the times and locations stated therein. If the Authority-furnished property, suitable for its intended use, is not made available to the Contractor, the Contracting Officer will, upon timely written request from the Contractor to the Contracting Officer Representative, if the facts warrant such action, equitably adjust any affected provision of this Contract pursuant to any procedures of Section 00748, CHANGES.
- B. Title to Authority-furnished property shall remain with the Authority. The Contractor shall maintain adequate property control records of Authority-furnished property in accordance with sound industrial practice.
- C. Unless otherwise provided in this Contract, the Contractor, upon acceptance of Authority-furnished property, assumes the risk of and shall be responsible for loss thereof or damage thereto except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this Contract.
- D. The Contractor shall, upon completion of this Contract, prepare for shipment, deliver FOB origin, or dispose of all Authority-furnished property not consumed in the performance of this Contract or not theretofore delivered to the Authority as directed. The net proceeds of such disposal will be credited to the Contractor price or paid in such other manner as may be directed.

00734 MATERIAL, WORKMANSHIP, AND EQUIPMENT

- A. Unless otherwise specifically provided in this Contract, all equipment, material, and articles incorporated in the Project covered by this Contract shall be new and of the most suitable grade for the purpose intended. Notwithstanding the Authority's review and Approval of any substitution, nothing herein relieves the Contractor of its obligations to satisfy its requirements under the Contract.
- B. Unless otherwise specifically provided in this Contract, reference to any equipment, material, or article to be incorporated in the Project and any patented process, by trade name, make,

or catalog number in the Contract Documents shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at its option, use any equipment, material, article, or process which, in the judgment of the Authority, is equal to that named. When required by this Contract or when called for by the Authority, the Contractor shall furnish to the Authority for Approval in accordance with Section 01330, SUBMITTAL PROCEDURES, the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment, which the Contractor contemplates incorporating in the Work. The Contractor shall furnish the Authority for Approval in accordance with Section 01330, SUBMITTAL PROCEDURES, full information concerning the material or articles, which are contemplated to be incorporated into the Work. When required by the Contract or when so directed by the Authority, Samples shall be submitted for approval in accordance with Section 01330, SUBMITTAL PROCEDURES, at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required Approval shall be at the risk of subsequent rejection.

- C. The Contractor shall provide construction equipment in first class working order and safe condition, of sufficient quantities and sizes to complete the Work as specified and detailed in the Contract Documents within the Period of Performance, and shall provide adequate maintenance of this equipment throughout the duration of the Project.
- D. Items of equipment that, at any time, prove ineffectual or hazardous to personnel or property, shall be promptly brought to acceptable condition or shall be removed from the Site as directed by the Authority or by any Jurisdictional Authority.

00735 HAZARDOUS MATERIALS

- A. The Authority will be responsible for the presence of and any associated consequences of asbestos, PCBs, petroleum, and other hazardous waste or like materials and radioactive materials (Hazardous Materials) on the Project if such presence is unknown, unexpected, or not identified in information provided by the Authority, or not otherwise known to the Contractor prior to the preparation of its Bid. The Contractor shall, upon encountering or recognizing such Hazardous Materials, immediately stop work in the affected area and report the condition to the Contracting Officer Representative in writing. The Contractor shall submit a hazardous material report in accordance with Section 01330, SUBMITTAL PROCEDURES. The Authority shall have no responsibility or liability for any Hazardous Material that is brought to the Project or handled by the Contractor or any Subcontractor.

00736 PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS

- A. The Contractor shall preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the Site of the Work, which is not to be removed and which does not unreasonably interfere with the Work. Care shall be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. The Contractor shall be obligated to replace or restore all existing vegetation that is destroyed, removed, or damaged in the performance of the Work to the condition that existed before work commenced.

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- B. The Contractor shall protect from damage all adjacent property including, but not limited to, land, existing structures, improvements, and utilities at or near the Site of the Work and shall repair or restore damage to such facilities resulting from failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the Work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer Representative may have the necessary work performed and charge the cost thereof to the Contractor.
 - C. Protection is more fully described in Section 01723, PROTECTION OF ADJACENT CONSTRUCTION.

00737 OPERATIONS AND STORAGE AREAS

- A. All operations of the Contractor, including storage of materials, shall be confined to areas authorized or approved by the Contracting Officer Representative. Temporary buildings such as storage sheds, shops, and offices may be erected by the Contractor only with the Approval of the Contracting Officer Representative and shall be built with labor and materials furnished by the Contractor without expense to the Authority. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon the completion of the Work. With the written consent of the Contracting Officer Representative, such buildings and utilities may be abandoned and need not be removed. Temporary construction facilities are more fully described in Section 01520, TEMPORARY CONSTRUCTION FACILITIES.
- B. The Contractor shall, under regulations prescribed by the Contracting Officer Representative, use only established roadways or construct and use such temporary roadways as may be authorized by the Contracting Officer Representative. Where materials are transported in the prosecution of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, protection against damage shall be provided by the Contractor, and damaged roads, curbs, or sidewalks shall be repaired by or at the expense of the Contractor.

00738 ACCIDENT PREVENTION

- A. To provide safety controls for protection to the life and health of employees and other persons, for prevention of damage to property, materials, supplies, equipment, and for avoidance of work interruptions in the performance of this Contract, the Contractor shall comply with all pertinent provisions of Authority safety requirements as specified in Section 01114, SAFETY/ENVIRONMENTAL REQUIREMENTS, and shall also take or cause to be taken such additional measures as the Contracting Officer Representative may determine to be reasonably necessary for that purpose.
- B. All construction work under this Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer Representative may, in writing, require the Contractor to remove from the Project any employee the Contracting Officer Representative deems to be incompetent, careless, or objectionable on other reasonable grounds related to the advancement of the Project.

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- C. The Contractor shall maintain an accurate record of and shall report to the Contracting Officer Representative in the manner and on the forms prescribed by the Contracting Officer Representative in accordance with Section 01330, SUBMITTAL PROCEDURES, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies, and equipment incidental to work performed under this Contract immediately after of such incident.
 - D. The Contracting Officer Representative will notify the Contractor of noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or its representative at the Site of the Work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer Representative may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of Claim for extension of time or for excess costs or damages by the Contractor.
 - E. Compliance with the provisions of this Section by Subcontractors shall be the responsibility of the Contractor.
 - F. Prior to commencement of the Work, the Contractor shall:
 - 1. Submit in writing in accordance with Section 01330, SUBMITTAL PROCEDURES, proposals for effectuating this provision for accident prevention;
 - 2. Meet in conference in accordance with Section 01312, PROJECT MEETINGS, with the Authority to discuss and develop mutual understanding relative to administration of the overall safety program.

00739 FIRE PROTECTION EQUIPMENT AND LIFE SAFETY AGREEMENT

- A. The Contractor shall submit, in accordance with Section 01330, SUBMITTAL PROCEDURES, a plan for a temporary fire protection system with provisions for fire protection systems and equipment as specified in Section 01114, SAFETY/ENVIRONMENTAL REQUIREMENTS, for use during the term of the Contract.

00740 PROTECTION OF PERSONS AND PROPERTY

- A. The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable occupational safety and health statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia, or political subdivision in which the Work is being performed and the Department of Labor OSHA standards. The Contractor shall comply with the approved Organizational Health and Safety Program as specified in Section 01114, SAFETY/ENVIRONMENTAL REQUIREMENTS, which is to be submitted by the Contractor prior to commencement of construction work in accordance with Section 01330, SUBMITTAL PROCEDURES. Further, the Contractor shall ensure that all methods of performing the Work do not involve danger to the personnel employed thereon, the public, or private property, whether or not these methods are cited or indicated in the Contract Documents. Should charges of violation of any of the above be issued to the Contractor in the course of the Work, a copy of each charge shall be immediately forwarded

to the Contracting Officer Representative. The Contractor shall promptly notify the Authority of all damage to property of the Authority or others and of injuries sustained by any persons, of which the Contractor becomes aware, including but not limited to, employees of the Contractor, in any manner relating directly or indirectly to the Work or otherwise to this Contract.

00741 CONSIDERATION AND BASIS OF PAYMENT

- A. In consideration of its undertaking under this Contract, the Contractor will be paid the sums set forth in this Contract, which shall constitute complete payment for all work and services required to be performed under this Contract and for all expenditures, which may be made and expenses incurred. The basis of payment will be the Contract Price, as shown on Section 00521, CONSTRUCTION CONTRACT FORM, and which shall constitute complete compensation for performance of all work required by the Contract.
- B. The Approved Monthly Progress Report and updated 90-Day Schedule as specified in Section 01322, CONTRACT PROGRESS REPORTING, and the Approved Quality Manager's Statement of Compliance Quality Certification for Payment Verification shall be the basis for progress payments to the Contractor.
- C. The basis of payment will be the Total Base Price as negotiated and accepted. The basis of payment will include any Options exercised and any Modifications to the Contract in addition to the Total Base Price, which shall constitute complete compensation for performance of all Work required by the Contract.

00742 CONTRACT PRICES AND BID SCHEDULE

- A. Payment for the various Bid items listed in the Bid Schedule shall constitute full compensation for furnishing all plant, labor, equipment, appliances, and material and for performing all operations required to complete the Work in conformity with the Contract Documents. All costs for work not specifically mentioned in the Bid Schedule shall be included in the Contract prices for the items listed.

00743 VARIATION IN ESTIMATED QUANTITIES

- A. Where the quantity of a pay item in this Contract is an estimated quantity provided by the Authority, and where the actual quantity of such pay item varies more than 15 percent above or below the estimated quantity stated in this Contract, an equitable adjustment in the Contract Price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contracting Officer Representative will, upon receipt of a written request submitted in accordance with Section 01330, SUBMITTAL PROCEDURES, for an extension of time within 10 Days from the beginning of such delay, or within such further period of time, which may be granted by the Contracting Officer Representative prior to the date of Final Payment of the Contract, ascertain the facts and make such adjustment for extending the Period of Performance as in the Contracting Officer Representative's judgment the findings justify.

00744 METHOD OF PAYMENT

- A. The Authority will make progress payments monthly as the Work proceeds on estimates approved by the Contracting Officer Representative for design related work and by estimates reviewed and approved by the Contracting Officer Representative for construction-related work. At least 5 Days before submission of any Application for Payment, a Preliminary Monthly Progress and Quality Status Report Review meeting will be held to review for acceptability of the schedules and the Quality System. The Contractor shall have an additional 5 Days to make corrections and adjustments and to complete and resubmit the schedules. A Formal Progress and Quality Status Report Review meeting will be held to approve the schedules. No progress payment will be made to Contractor until the schedules are provided and accepted by the Contracting Officer Representative, whose acceptance will not be unreasonably withheld. The progress schedule shall be acceptable to Authority as providing an orderly progression of the Work to completion within any specified Milestones and the Period of Performance, but acceptance of the progress schedule shall neither impose on Authority responsibility for the sequencing, scheduling, or work progress nor interfere with or relieve the Contractor from Contractor's full responsibility for the Work. The format and structure of the progress schedule shall be as set forth in Section 01322, CONTRACT PROGRESS REPORTING. The Authority's acceptance shall not be deemed to confirm that the schedule is a reasonable plan for performing the Work.
- B. The Contractor's progress payment requests will be reviewed based on the scheduled and actual progress of the Work as reflected on the construction schedule, cost-loaded progress schedule or bar graph as applicable, and monthly updates. The Contractor shall not be entitled to progress payments, and the Authority shall have no obligation to review or approve progress payment requests if the Contractor has failed to submit or update the schedules, if the applicable schedule or update submitted by the Contractor fails to accurately reflect the actual progress of the Work, or if the Contracting Officer Representative declines to approve the submitted schedules for any of the reasons stated in this Contract. A decision not to approve a request for progress payments based upon the Contractor's failure to comply with the schedule and update submission requirements as committed under this Contract shall be at the sole and absolute discretion of the Contracting Officer Representative.
- C. Furnish a breakdown of the total Contract Price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the Contracting Officer Representative may authorize material delivered to the Site and preparatory work completed to be taken into consideration. Material delivered to the Contractor at locations other than the Site may also be taken into consideration if the Contractor furnishes satisfactory evidence that the Contractor has acquired title to such material and that it will be utilized on the Work covered by this Contract.
- D. If the Contract Price is more than \$50,000, material delivered that will be incorporated into the Project will be taken into consideration in computing progress payments, provided the material is delivered on the Site, or is delivered to the Contractor and properly stored in a warehouse, storage yard, or similar suitable place within 25 miles of the Site or such reasonable distance in excess of 25 miles as may be approved by the Contracting Officer Representative, provided, however, that the Contractor has the proper storage facilities,

- security, and insurance for the stored material as Approved by the Contracting Officer Representative. Before each such payment is made for delivered material on the Site, furnish to the Contracting Officer Representative such evidence as may be required as proof of the ownership, quantity, and value of such materials. Before each such payment is made for delivered materials off the Site, furnish the Contracting Officer Representative evidence of ownership and properly executed bills of sale to the Authority for the delivered material upon which payment is being made.
- E. In determining progress accomplished, the Authority will allow as an element of work accomplished, i.e., progress toward completion, only 50 percent of the invoiced cost of materials or equipment delivered to the Site, or suitable location as described in Paragraph D above, but not incorporated in the construction up to the time the materials or equipment are actually incorporated in the Work.
 - F. In making such progress payments, 5 percent of the estimated amount of work completed will be retained until final completion and Acceptance of the Contract Work. Also, whenever the Work is substantially complete, and the Contractor is in compliance with all provisions of the Contract, if the Contracting Officer Representative considers the amount retained to be in excess of the amount adequate for the protection of the Authority, the Contracting Officer Representative may use discretion in releasing to the Contractor all or a portion of such excess amount.
 - G. Where the time originally specified for completion of this Contract exceeds 1 year, the Contracting Officer Representative, at any time after 50 percent of the Work has been completed, if the Contracting Officer Representative finds that satisfactory progress (satisfactory progress includes prosecution of physical work, adherence to DBE requirements if applicable, quality assurance, and all other provisions of the Contract) is being made, may reduce the total amount retained from progress payments to the minimum level necessary to protect the interest of the Authority.
 - H. All material and work covered by progress payments made shall thereupon become the sole property of the Authority but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Authority to require the fulfillment of all of the terms of the Contract.
 - I. See Section 01775, CLOSEOUT, for Final Inspection requirements.
 - J. Upon completion and Acceptance of all work, the amount due the Contractor under this Contract will be paid upon the presentation of a properly executed voucher as specified in Section 01775, CLOSEOUT, and after the Contractor shall have furnished the Authority with a release of all Claims against the Authority arising by virtue of this Contract other than Claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the Contract has been assigned, a release may also be required of the assignee.
 - K. The Authority may, at its sole discretion, withhold payment to the Contractor at the appropriate percentage for work, or portions thereof, that it deems to be defective or in nonconformance with the requirements of the Contract Documents.

- L. Satisfactory records for design, inspection, testing, or other quality elements required under the approved Quality System; operation and maintenance manuals; As-Built Drawings and As-Built Specifications; electronic media; as-built Project Schedule; spare parts list, delivery information and distribution of spare parts; configuration management system; training manual, lesson plans, and student's training manual and electronic media of such, as applicable; survey record log; correspondence file; releases; vouchers; request for Final Payment; certifications, affidavits and warranties and guarantees; and must be submitted in order to receive payment for the completed Work. Final Payment will be made in accordance with this Section and Section 00755, FINAL PAYMENT.

00745 PROGRESS PAYMENTS FOR LUMP SUM ITEMS

- A. If requested, the Contractor shall furnish to the Contracting Officer Representative in a breakdown of the total Contract Price for every lump sum item on the Bid Schedule, showing the amount included therein for each principal category of the Work, in such detail as to provide a basis for determining progress payments. The breakdown shall be supported by such data to substantiate its correctness as the Contracting Officer Representative may require.

00746 GARNISHMENT OF PAYMENTS

- A. Payment under this Contract shall be subject to garnishment and attachment orders issued pursuant to the laws of Maryland, Virginia, and the District of Columbia, and to levies issued under the laws of the United States.

00747 SUBCONTRACT PAYMENTS

- A. Establish procedures to ensure timely payment of amounts due pursuant to the terms of the Subcontracts. Pay each Subcontractor for satisfactory performance of its contract, no later than 10 Days from the date of the Contractor's receipt of payment from the Authority for work by that Subcontractor. Release, within 10 Days of satisfactory completion of all work required by the Subcontractor, any retention withheld from the Subcontractor.
- B. Certify on each payment request submitted to the Authority that payment has been or will be made to all Subcontractors in accordance with Paragraph A above. Notify the Contracting Officer Representative with each payment request, of any situation in which scheduled Subcontractor payments have not been made.
- C. If a Subcontractor alleges that the Contractor has failed to comply with this Section, the Contractor agrees to support any Authority investigation, and, if deemed appropriate by the Authority, to consent to remedial measures to ensure Subcontractor payment that is due.
- D. The Contractor agrees that the Authority may provide appropriate information to interested Subcontractors who want to determine the status of Authority payments to the Contractor.
- E. Nothing in this Section is intended to create a contractual obligation between the Authority and any Subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

00748 CHANGES

- A. The Contracting Officer Representative (or Contracting Officer, depending on the level of authority required) may, at any time, and without notice to the sureties, by written order designated or indicated to be a Modification, make any change in the Work within the general scope of the Contract including, but not limited to, changes:
1. In the Scope of the Work or Contract Documents;
 2. In the method or manner of performance of the Work;
 3. In the Authority-furnished facilities, equipment, materials, services, or Site; or
 4. Directing acceleration in the performance of work.
- B. Any other written order or an oral order, which terms as used in this Paragraph B, shall include direction, instruction, interpretation, or determination from the Contracting Officer Representative or Contracting Officer, which causes any such change, shall be treated as a Modification under this Section, provided that the Contractor gives the Contracting Officer Representative written notice in accordance with Section 01330, SUBMITTAL PROCEDURES, stating the date, circumstances, and source of the order and that the Contractor regards the order as a Modification.
- C. Except as herein provided, no order, statement, or conduct of the Contracting Officer Representative or Contracting Officer shall be treated as a change under this Section or entitle the Contractor to an equitable adjustment hereunder.
- D. If any change under this Section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment will be made and the Contract modified in writing accordingly: Provided, however, that no Claim for any change under Paragraph B above will be allowed for any costs incurred more than 20 Days before the Contractor gives written notice as therein required. This 20-Day limitation will be strictly applied regardless of whether the Authority is prejudiced by any lack of notice.
- E. If the Contractor intends to request an equitable adjustment under this Section, it must, within 30 Days after receipt of a written Modification under Paragraph A above or furnishing of a written notice under Paragraph B above, submit to the Contracting Officer Representative in accordance with Section 01330, SUBMITTAL PROCEDURES, a written proposal in accordance with this CHANGES Section, unless this period is extended by the Contracting Officer Representative. The proposal hereunder may be included in the notice under Paragraph B above.
- F. No Claim by the Contractor or an equitable adjustment hereunder will be allowed if asserted after Final Payment under this Contract.
- G. For additional Modification procedures see Section 01250, CONTRACT MODIFICATION PROCEDURES.

00749 PRICING OF ADJUSTMENTS

- A. When costs are a factor in any determination of a Contract Price adjustment pursuant to Section 00748, CHANGES, or any other Section of this Contract, such costs shall be in accordance with the contract cost principles and procedures in Subpart 31.1 of the Federal Acquisition Regulations (48 CFR 31.1). Where general and administrative expense is recoverable as part of any pricing adjustment under this Contract, the adjustment shall be based on the relationship between the entity's total general and administrative expenses allowable under FAR cost principles for all construction-type operations during the fiscal or calendar year covering the actual performance period of the work included in this pricing adjustment, and the entity's total cost input (excluding General and Administrative costs) for construction-type operations during the same period, expressed as a percentage, applied to the direct and overhead Contract costs included in the pricing adjustment; i.e., general and administration expenses will be paid on a percentage of cost basis, not on a daily rate type basis.
- B. Notwithstanding any interpretation of the aforementioned contract cost principles and procedures to the contrary, the Authority shall not be liable for interest, however represented, on or as a part of any Claim, request, proposal, or adjustment (including equitable adjustments) whether said Claim, request, proposal or adjustment (including equitable adjustments) arises under the Contract or otherwise.

00750 ACCOUNTING AND RECORD KEEPING

- A. Applicability. This Section shall become effective for and shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Authority. However, where the original amount of this Contract is less than \$1,000,000, Paragraph C of this Section does not apply unless the adjustment is expected to exceed \$50,000.
- B. Forward Price Adjustments. Unless expressly waived in writing in advance by the Contracting Officer Representative, the Contractor shall furnish to the Contracting Officer Representative in accordance with Section 01330, SUBMITTAL PROCEDURES, a cost proposal in advance of performance of any work for which a price adjustment is requested under this Contract. The proposal format shall be as detailed in Section 00748, CHANGES. The Contractor shall initiate such records as are necessary to substantiate all elements of the pricing proposal. Such records supporting the costs of each pricing adjustment request shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.
- C. Post-Pricing Adjustments.
 - 1. In addition to the records required to be originated under Paragraph B above, in the event pricing of an adjustment under this Contract is not agreed upon between the Contractor and the Contracting Officer Representative prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any Subcontractor engaged in work for which the pricing adjustment is requested, shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting procedures approved by the Contracting Officer Representative of all incurred

separated costs related to the work for which the pricing adjustment is requested. Proposed cost records and accounting procedures shall be submitted to the Contracting Officer Representative in accordance with Section 01330, SUBMITTAL PROCEDURES, for approval. The Contractor shall maintain accounts and records, which segregate and account for the costs of all work associated with that part of the Project for which the pricing adjustment is requested and shall allocate among:

- a. Work required under the base Contract or under any Option if applicable;
 - b. Work requested to be reimbursed under the pricing adjustment; and
 - c. Other claim, including but not limited to, changes, differing Site conditions, and the like.
2. In addition to the accounting system established to segregate and account for Contract Price adjustments, which shall accumulate such costs by work activity under logical cost groups, such as material, labor, equipment, Subcontracts, field overhead, and the like, the Contractor shall maintain field records associated with these costs on a form approved by the Contracting Officer Representative. Subject to agreement between the Contractor and the Contracting Officer Representative, or upon direction of the Contracting Officer Representative for work under Section 00748, CHANGES, the Contractor shall use Authority Forms (Daily Report - Labor, Materials, and Equipment), to be supplied by the Authority at the request of the Contractor and submitted in accordance with Section 01330, SUBMITTAL PROCEDURES. The terms of Section 00748, CHANGES, shall apply regardless of the form used. The use of Authority Forms to segregate Modification costs does not, in and of itself, invoke the provisions of Section 00748, CHANGES.
- D. Availability. The accounts, records, and costs information required to be originated under Paragraphs B and C above together with all other accounts, records, and costs information related to this Contract, shall be maintained and made available by the Contractor or Subcontractor(s):
1. At the office of the Contractor or Subcontractor(s) at all reasonable times for inspection, audit, reproduction, or such other purposes as may be required by the Contracting Officer Representative, or pursuant to any other Sections of this Contract;
 2. Until the expiration of three years from the date of payment of the final \$100 (Final Payment) under this Contract or such lesser time as is specified in Contractor Records Retention, Subpart 4.7 of the Federal Acquisition Regulations (48 C.F.R. 4.7) and for such longer period, if any, as is required by applicable statute, or by any other Sections of this Contract, or by Paragraphs D.2.a and D.2.b below:
 - a. If the Contract is completely or partially terminated, for a period of 3 years from the date of Final Payment; and
 - b. If a pricing adjustment is involved in any appeal under Section 00730, DISPUTE RESOLUTION, or in any litigation related to this Contract, for a period of 1 year following the final disposition of the appeal or litigation.

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- E. When asserting a Claim under the various Sections of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit such costs as are deemed appropriate by the Contracting Officer Representative. No payment will be made to the Contractor on its Claim until such records are made available and access is permitted.
- F. Limitation on Pricing Adjustment
1. In the event the Contractor or any Subcontractor fails to originate or to maintain, or to make available any accounts or records as required under this or any other Section of the Contract, any pricing adjustment or portion thereof previously granted by the Contracting Officer Representative for which records are not available, shall be rescinded and re-computed, or if a pricing adjustment has not yet been granted, shall be computed, in an amount not to exceed the direct costs for which accounts or records are not available, plus a single markup for indirect expenses not to exceed 10 percent of the direct costs so determined by the Contracting Officer Representative. The adjustment will be established by the Contracting Officer Representative based upon, at its election, one of the following:
 - a. An audit of any existing books and records of the Contractor or Subcontractor; or
 - b. An Authority estimate adopted by the Contracting Officer Representative; or
 - c. A combination of Paragraphs F.1 and F.2 above.
 2. The Contractor and Subcontractors will not be allowed any profit for the work for which the Contractor or Subcontractor fails to originate, maintain, or to make available any accounts or records as required under this Contract.
- G. The Contractor shall insert a clause containing all the provisions of this Section in all Subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting Officer Representative under this Contract.

00751 AUDIT - PRICE ADJUSTMENTS

- A. General: The Authority shall have the audit and inspection rights described in the applicable Paragraphs B, C, and D below.
- B. Examination of costs: If this is a cost-reimbursement type, incentive, time and materials, labor-hour or price re-determinable contract, or any combination thereof, the Contractor shall maintain, and the Authority shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred for the performance of this Contract. Such right of examination shall include inspection at all reasonable times of the Contractor's plant, or such parts thereof, as may be engaged in the performance of this Contract.
- C. Cost or pricing data: If the Contractor submitted cost or pricing data in connection with the pricing of this Contract or any change or modification thereto submitted in accordance with

Section 01330, SUBMITTAL PROCEDURES, unless such pricing was based on adequate price competition, established catalog, market prices of commercial items sold in substantial quantities to the public, prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, the Authority shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance or such Contract change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted along with the computations and projections used therein.

- D. The Contractor shall insert a clause containing all the provisions of this Section, including this Paragraph D in all Subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the Contracting Officer Representative under this Contract.

00752 CERTIFICATE OF CURRENT COST OR PRICING DATA

- A. The Contractor shall provide a Certificate of Current Cost or Pricing Data to the Authority in accordance with Section 01330, SUBMITTAL PROCEDURES, on a form suitable to the Contracting Officer as required in Subpart 15.403 of the Federal Acquisition Regulations (48 CFR 15.403) in support of any negotiated contract expected to exceed \$100,000 or any modification to a formally advertised or negotiated contract on which the aggregate of the increases and decreases in cost are expected to exceed \$100,000. The Contracting Officer Representative at its discretion may request cost or pricing data for modifications on which costs are less than \$100,000 and an attendant certificate of current cost or pricing data. Cost or Pricing data submittal procedures are specified in Section 00201, GENERAL INSTRUCTIONS, and Section 00748, CHANGES.

00753 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - PRICE ADJUSTMENTS

- A. This Section shall become operative only with respect to Modifications of this Contract, which involve aggregate increases, decreases, or both in cost plus applicable profits in excess of \$100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation. The right to price reduction under this Section is limited to defects in data relating to such Modification.
- B. If any price, including profit or fee, negotiated in connection with any price adjustment under this Contract was increased by any significant sums because:
 - 1. The Contractor furnished cost or pricing data in accordance with Section 01330, SUBMITTAL PROCEDURES, which was not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;
 - 2. A Subcontractor, pursuant to the Section 00754, SUBCONTRACTOR COST OR PRICING DATA, or any Subcontract provision therein required, furnished cost or pricing data in accordance with Section 01330, SUBMITTAL PROCEDURES, which was not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data;

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3. A Subcontractor or prospective Subcontractor furnished cost or pricing data in accordance with Section 01330, SUBMITTAL PROCEDURES, which was required to be complete, accurate, and current and to be submitted to support a Subcontract cost estimate furnished by the Contractor in accordance with Section 01330, SUBMITTAL PROCEDURES, but which was not complete, accurate, and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
 4. The Contractor or a Subcontractor or prospective Subcontractor furnished any data, not within Paragraphs B.1, B.2, or B.3 above in accordance with Section 01330, SUBMITTAL PROCEDURES, which was not accurate, as submitted; then the price shall be reduced accordingly and the Contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the Contract Price due to defective Subcontract data of a prospective Subcontractor, when the Subcontract was not subsequently awarded to such Subcontractor, will be limited to the amount, plus applicable overhead and profit markup, by which the actual Subcontract, or actual cost to the Contractor if there was not a Subcontract, was less than the prospective Subcontract cost estimate submitted by the Contractor in accordance with Section 01330, SUBMITTAL PROCEDURES, provided the actual Subcontract price was not affected by defective cost or pricing data. (Note: Since the Contract is subject to reduction under this Section by reason of defective cost or pricing data submitted in connection with certain Subcontracts, it is expected that the Contractor may wish to include an article in each such Subcontract requiring the Subcontractor to appropriately indemnify the Contractor. However, the inclusion of such an article and the terms thereof are matters of negotiation and agreement between the Contractor and the Subcontractor, provided that they are consistent with disputes provisions in Subcontracts. It is also expected that any Subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower tier Subcontractors.)

00754 SUBCONTRACTOR COST OR PRICING DATA

- A. The Contractor shall require Subcontractors hereunder to submit cost or pricing data in accordance with Section 01330, SUBMITTAL PROCEDURES, prior to award of any negotiated lump sum or cost-reimbursement type, incentive, or price re-determinable Subcontract over \$100,000. The Contractor shall require Subcontractors to certify that to the best of their knowledge and belief, the cost and pricing data submitted under this Paragraph is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Subcontract. The Contractor shall insert the substance of this Section in each of its negotiated lump sum or cost reimbursement type, price re-determinable, or incentive Subcontracts over \$100,000 hereunder. The Contractor also shall insert the substance of this Section in each Subcontract with respect to any change or other modification made pursuant to one or more Sections of this Contract, which involves a price adjustment greater than \$100,000. The Contractor shall conduct a cost analysis of all negotiated Subcontracts.
- B. The requirements that follow shall become operative only with respect to any change or other modification made pursuant to one or more Sections of this Contract, which involves a price adjustment in excess of \$100,000. The requirements of this Section shall be limited to such price adjustments:

1. The Contractor shall require Subcontractors hereunder to submit cost or pricing data in accordance with Section 01330, SUBMITTAL PROCEDURES:
 - a. Prior to award of any cost-reimbursement type, incentive, or price re-determinable Subcontract;
 - b. Prior to the award of any Subcontract the price of which is expected to exceed \$100,000; or,
 - c. Prior to the pricing of any Subcontract change or other modification for which the price adjustment is expected to exceed \$100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation.
2. The Contractor shall require Subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under this Paragraph B is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Contract Modification.
- C. The Contractor shall insert the substance of this Section in each Subcontract hereunder, which exceeds \$100,000.

00755 FINAL PAYMENT

- D. The Authority will make Final Payment to the Contractor following Acceptance of Work, including receipt of releases from owners of property affected by the Contractor's performance under this Contract, and submittal of a final Affidavit of Amounts Paid to all businesses participating under the Contract. Final Payment shall include the entire sum found to be due hereunder after deducting therefrom such amounts as the terms of this Contract permit. Prior estimates and payments, including those relating to extra work or work omitted, shall be subject to correction by the Final Payment. Final Payment will be made only for materials actually incorporated in the Work; and, all materials remaining for which progress payments have been made shall revert to the Contractor, unless otherwise agreed, and progress payments made for these items shall be deducted from the Final Payment for the Work.
- E. By accepting Final Payment, the Contractor will be deemed thereby to have released the Authority from all Claims of the Contractor and all liability to the Contractor for things done or furnished in connection with the Work and for every act and neglect of the Authority and others relating to or arising out of the Work.

00756 ACCESS AND EXAMINATION OF RECORDS

- A. The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor, which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor also agrees, pursuant to 49 CFR. 633.17 to provide the FTA Administrator or its authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U. S. C. 5307, 5309 or 5311.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than 3 years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of Claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the U.S. Secretary of Transportation, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, Claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- D. The Contractor agrees that the Contracting Officer, and the Comptroller General of the United States and the United States Secretary of Transportation if applicable, or their duly authorized representatives, shall, until the expiration of 3 years after Final Payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract, for the purpose of making audit, examination, excerpts, and transcription.

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- E. The Contractor further agrees to include in all its Subcontracts hereunder, a provision to the effect that the Subcontractor agrees that the Contracting Officer, and the Comptroller General of the United States and the United States Secretary of Transportation if applicable, or their duly authorized representatives, shall until the expiration of 3 years after Final Payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Subcontractor involving transactions related to the Subcontract, for the purpose of making audit, examination, excerpts, and transcription. The term "Subcontract," as used in this Section, excludes:
1. Purchase Orders Not Exceeding \$2,500 and,
 2. Subcontracts or purchase orders for public utility services at rates established from standard costs applicable to the public.

00757 WARRANTY/GUARANTEE OF CONSTRUCTION

- A. Unless otherwise specifically provided for in the Contract, the Contractor, notwithstanding any final inspection, acceptance, or payment guarantees that all work performed and materials and equipment furnished under this Contract are in accordance with the Contract requirements. The Contractor also guarantees that when installed all materials and equipment were free from defects and will remain so for a period of at least 2 years from the date of Acceptance by the Authority.
- B. If defects of any kind should develop during the period such guarantees are in force, the Contracting Officer will immediately notify the Contractor in writing of such defects. The Authority thereupon shall have the right, by a written notice to that effect, to require the Contractor to repair or replace all inferior or defective work, material, or equipment or permit it to remain in place and assess the Contractor the costs it (the Contractor) would have incurred had the Contractor been required to effect repair or replacement.
- C. Corrections or replacement of parts, materials, equipment, supplies or construction made pursuant to the provisions of this Section shall also be subject to the provisions of the Contract including this clause to the same extent as parts, material, equipment, supplies, or construction originally installed. The warranty, with respect to such new or corrected parts, materials, equipment, supplies, or construction, shall be equal in duration as that set forth in Paragraph A above and shall run from the date that such parts, materials, equipment, supplies, or construction are replaced or corrected and accepted by the Authority.
- D. The Contractor guarantees to reimburse the Authority for, or to repair or replace, damages to the Site, buildings, or contents thereof that are caused by inferior or defective workmanship, or the use of inferior or defective materials or equipment in the performance of this Contract. The Contracting Officer will immediately notify the Contractor in writing when such damage occurs. The Authority shall have the right to require the Contractor to repair or replace such damaged areas or equipment, or elect to permit such damage to remain as is and assess the Contractor the costs it would have incurred had it been required to effect repair or replacement.
- E. Should the Contractor fail to proceed promptly, after notification by the Contracting Officer, to repair or replace inferior or defective work, material, or equipment, or damage to the Site,

- buildings, or contents, thereof, caused by inferior or defective work, or the use of inferior or defective materials, or equipment, the Authority may have such work, material, equipment, or damage repaired or replaced and charge all costs incident thereto to the Contractor.
- F. Special guarantees that may be required under the Contract shall be subject to the elections set forth above unless otherwise provided in such special guarantees.
- G. Should the Contractor fail to prosecute the Work or fail to proceed promptly to provide guarantee period services after notification by the Contracting Officer, the Authority may, subject to Section 00727, TERMINATION FOR DEFAULT, DAMAGES FOR DELAY AND TIME EXTENSIONS, contained in this Contract, and after allowing the Contractor 10 Days to correct and comply with the Contract, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed or unsatisfactorily performed. In this event, the Authority may take over the Work and complete it by contract or otherwise, and may take possession of and use any materials, appliance, and plant on the Work Site necessary for completing the Work. The Contractor and its sureties shall be liable for damages to the Authority resulting from the Contractor's refusal or failure to complete the Work within this specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes increased costs incurred by the Authority in completing the Work.
- H. The decision of the Contracting Officer as to liability of the Contractor under this Section is subject to the appeal procedure provided for in Section 00730, DISPUTE RESOLUTION, of this Contract.
- I. All Subcontractor's, manufacturers', and Suppliers' warranties and guarantees, expressed or implied, respecting any part of the Work and any material used therein shall be deemed obtained in accordance with Section 01775, CLOSEOUT, and shall be enforced by the Contractor for the benefit of the Authority without the necessity of separate transfer or assignment thereof, provided that, if directed by the Authority, the Contractor shall require such Subcontractor's, manufacturers and Suppliers to execute such warranties and guarantees in writing to the Authority in accordance with Section 01775, CLOSEOUT. In connection therewith, the Contractor further agrees to perform the Work in such a manner or consistent with and so as to preserve all such warranties and guarantees.
- J. Certain specifications Sections and General Requirements provide for a warranty longer than the general warranty provided in this Contract, or commence from dates other than Final Completion and Acceptance of the Work. Where such warranties are specified as both in addition to the general warranty and in total years, the total years shall govern, and the warranty period shall commence from Final Completion and Acceptance of the Work.

00758 CORRECTION OF DEFICIENCIES

- A. This Section shall apply only to those deficiencies discovered by either the Authority or the Contractor within 2 years after Acceptance. Materials or equipment will be regarded as having a deficiency if a type of material or equipment in like service accumulates a failure rate greater than 5 percent within a period of 2 years following Acceptance by the Authority. Systems or subsystems will be regarded as having a deficiency if they exhibit conditions or characteristics, which are not in compliance with the Contract Documents, and intent of this Contract anytime during a period extending for 2 years following their Acceptance by the Authority.

- B. Notice of deficiency to Contractor: If the Authority determines that a deficiency exists in any of the materials, equipment, systems, or subsystems provided the Authority under this Contract, it will promptly notify the Contractor of the deficiency, in writing, within 30 Days.
- C. Recommendation for correction: Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted materials, equipment, systems, or subsystems, the Contractor shall promptly submit to the Authority its recommendation for corrective actions, together with supporting information in sufficient detail for the Authority to determine what corrective action, if any, shall be undertaken in accordance with Section 01775, CLOSEOUT. The recommendation shall be submitted to the Authority within 15 working days of discovery or receipt of notice of the deficiency.
- D. Direction to Contractor concerning correction of deficiencies: Within 30 Days after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, at its sole discretion, will give the Contractor written notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable time and at a specified location.
- E. Schedule of deficiency corrections: The Contractor shall prepare Schedule of Deficiency Corrections and deliver it to the Authority for approval in accordance with Section 01775, CLOSEOUT, within 15 working days of discovery of deficiency by the Contractor or receipt of notice of discovery of a deficiency by the Authority.
- F. Correction of deficiencies by Contractor: The Contractor shall promptly comply with all timely written directions by the Contracting Officer to correct or partially correct a deficiency, at no increase in the Contract Price. The Contractor shall also prepare and furnish to the Authority in accordance with Section 01775, CLOSEOUT, data and reports applicable to corrections required under this Section (including revision and updating of all other affected data called for under this Contract) at no increase in the Contract Price.
- G. Modification of Contract with respect to uncorrected deficiencies: In the event of timely notice of a decision not to correct or only to partially correct a deficiency, the Contractor shall submit to the Authority within 15 working days, a technical and cost proposal to amend the Contract in accordance with Section 01775, CLOSEOUT, to permit acceptance of the affected materials, equipment, systems, or subsystems in accordance with the revised requirements, and an equitable reduction in Contract Price shall promptly be negotiated by the parties and stated in a Modification to this Contract.
- H. Failure to correct: If the Contractor fails or refuses to present a detailed recommendation for corrective action and to prepare and furnish data and reports as required in Paragraph G above, then the Contracting Officer will give the Contractor written notice specifying the failure or refusal and setting a period after receipt of the notice within which it must be corrected. If the failure or refusal is not corrected within the specified period, the Contracting Officer may, by contract or otherwise, as required:
 - 1. Obtain detailed recommendations for corrective action;
 - 2. Either:

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- a. Correct the materials, equipment, systems or subsystems, or
 - b. Replace the materials, equipment, systems or subsystems; and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of non-conforming materials, equipment, systems or subsystems for the Contractor's account in a reasonable manner, in which case the Authority is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expense of care and disposition, as well as for excess costs incurred or to be incurred;
3. and obtain applicable data and reports.
 4. Charge to the Contractor the cost occasioned to the Authority thereby.
- I. Correction of deficient replacements and re-performances: Materials or equipment corrected or furnished in replacement and systems or subsystems revised pursuant to this Section shall also be subject to all the provisions of the Contract to the same extent as materials, equipment, systems, or subsystems initially accepted.
 - J. The correction of materials or equipment exhibiting a failure rate greater than 5 percent means taking of any and all actions necessary to correct the deficiencies, including removal and replacement of all pieces of material or equipment in like service in a manner satisfactory to the Contracting Officer Representative. The correction of systems or subsystems exhibiting one or more deficiencies means taking any and all actions necessary to eliminate any and all deficiencies in a manner satisfactory to the Authority.
 1. Disassembly/reassembly expense: The Contractor shall be liable for reasonable cost of disassembly/reassembly of larger items necessary to remove the materials or equipment to be inspected and/or returned for correction or replacement.
 2. Transportation charges:
 - a. When the Authority returns supplies to the Contractor for correction or replacement pursuant to this Section, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the designated destination point under this Contract to the Contractor's plant, in addition to any charges provided for in Paragraph J.2.b below. The Contractor shall also bear the responsibility for the supplies while in transit.
 - b. When compliance with the terms of this Section by the Contractor involves shipment of corrected or replacement supplies from the Contractor to the Authority, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the Contractor's plant to the designated destination point under this Contract, in addition to any charges provided for Paragraph J.2.a above. The Contractor shall also bear the responsibility for the supplies while in transit.
 - K. No extension in time for performance; no increase in Contract Price: In no event shall the

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- L. Authority be responsible for extension or delays in the scheduled deliveries or periods of performance under this Contract as a result of the Contractor's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or Period of Performance as a result of such correction of deficiencies, except as may be agreed to by the Authority in a supplemental agreement with adequate consideration.
 - M. The Contractor shall not be responsible under this Section for the correction of deficiencies in Authority-furnished property, except for deficiencies in installation, unless the Contractor performs or is obligated to perform any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.
 - N. The Contractor shall not be responsible under this Section for the correction of deficiencies caused by the Authority.

00759 COVENANT AGAINST CONTINGENT FEES

- A. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies utilized by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Contracting Officer shall have the right to annul this Contract without liability or in his or her discretion to deduct from the Contract Price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

00760 OFFICIALS NOT TO BENEFIT

- A. No member of Congress or resident commissioner shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom; but this Paragraph shall not be construed to extend to this Contract if made with a corporation for its general benefit.
- B. No member, officer, or employee of the Authority or of a local public body during tenure with the Authority or with another local public body and 1 year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

00761 GRATUITIES

- A. In connection with performance of work required under this Contract, or any changes or Modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts, or otherwise) by the Contractor, or any agent, representative, or other person deemed to be acting on behalf of the Contractor, or any Supplier or Subcontractor furnishing material to or performing work under this Contract, or any agent, representative or other person deemed to be acting on behalf of such Supplier or Subcontractor, to any Director, Officer, or employee of the Authority; or to any Director, Officer, employee, or agent of any of the Authority's agents, consultants, representatives, or other persons deemed to be acting for or on behalf of the Authority, with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract is expressly forbidden. The

terms of this Section 00761, GRATUITIES, shall be strictly construed and enforced in the event of violations hereto.

00762 CONFLICT OF INTEREST

- A. Neither the Contractor nor any person affiliated with it shall have, during the term of this Contract and any extension thereof, any contractual or other financial relationship with the Authority, with any Authority prime contractor, or with any Subcontractor or Supplier to any Authority prime contractor other than the contractual relationship established under this Contract, unless an exception is granted as described below. Such exceptions will not unreasonably be withheld.
- B. Upon request of the Contractor submitted in accordance with Section 01330, SUBMITTAL PROCEDURES, and upon full disclosure and for good cause the Contracting Officer may, at its sole discretion, grant an exception to the requirement of this Section 00762, CONFLICT OF INTEREST, when in its judgment, the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which an exception is requested.
- C. If, during the performance of this Contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved, which is not in compliance with the provisions of this Section 00762, CONFLICT OF INTEREST, it shall promptly notify the Contracting Officer in writing in accordance with Section 01330, SUBMITTAL PROCEDURES, and fully disclose all circumstances thereof. Should the Contracting Officer not grant an exception to the requirements of this Section 00762, CONFLICT OF INTEREST, the Contractor shall, within 10 Days of written notice from the Contracting Officer to do so, take all action necessary to comply with the terms of this Section.
- D. If the Contractor fails to comply with the terms of this Section 00762, CONFLICT OF INTEREST, the Contracting Officer may withhold payments due under the Contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of 10 Days from written notice from the Contracting Officer as provided in this Section, terminate the Contract for default pursuant to Section 00727, TERMINATION FOR DEFAULT, DAMAGES FOR DELAY, AND TIME EXTENSIONS, of this Contract.
- E. The Contractor, in performing this Contract, shall avoid all conduct, which might result in or give the appearance of creating for Directors, Officers, or employees of the Authority in their relationship with the Contractor any conflicts of interest or favoritism or the appearance thereof and shall avoid any conduct, which might result in a Director, Officer, or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- F. The Contractor shall not, during the period of performance of the Contract, engage in any other contracts where its customary role would or might:
 - 1. Impair the actual or potential ability of the Contractor to render impartial assistance or advice to the Authority;

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2. Impair the Contractor's objectivity in performing this Contract or any other Authority contract, and
 3. Give the Contractor an unfair competitive advantage with respect to the work under another proposed Authority contract.
- G. Any determination by the Contracting Officer under this Section shall be final and shall be subject to Section 00730, DISPUTE RESOLUTION.

00763 EMPLOYMENT RESTRICTION WARRANTY

- A. The Contractor warrants that it will not offer employment to any officer or employee of the Washington Metropolitan Area Transit Authority (WMATA) who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least 1 year after the officer or employee has ceased involvement in or responsibility for the matter.
- B. The Contractor further warrants that it will not employ any WMATA officer or employee who has had direct responsibility for any matter of financial interest to the Contractor within the year prior to the retirement or termination of the officer or employee until at least 1 full year after such officer or employee has left the employment of the Authority.
- C. The 1-year restriction described in Paragraphs A and B above may be waived at the discretion of the Authority if the WMATA employee or former employee has been subject to a Reduction in Force; in such case, the Authority will provide the Contractor with a letter to that effect.
- D. If a waiver is granted, or if a former employee of WMATA is eventually hired, the Contractor shall be responsible for ensuring that the former employee is not directly involved in negotiating or otherwise dealing with WMATA on any particular matter over which such employee had responsibility during his or her period of employment at WMATA.
- E. Should the Contractor fail to comply with Paragraphs A, B, or D above, the Authority shall have the right to withhold payment under this Contract in an amount not to exceed 2 percent of the total Contract amount as liquidated damages to the Authority, such withholding shall be in addition to any other withholding or damages available for other matters under this Contract. Further, the Authority will consider such violation in evaluating the Contractor's responsibility in connection with award of any other Authority contract.

00764 CIVIL RIGHTS

- A. Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing regulations that the Authority, and the FTA if applicable, may issue.

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- B. Equal Employment Opportunity: The following equal employment opportunity requirements apply to this Contract.
1. Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000e note), and with all applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with all implementing requirements the Authority, and the FTA if applicable, may issue.
 2. Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with all implementing requirements the Authority, and the FTA if applicable, may issue.
 3. Disabilities: In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with all implementing requirements the Authority, and the FTA if applicable, may issue.
- C. The Contractor also agrees to include these requirements in each Subcontract, modified only if necessary to identify the affected parties.
- D. The Contractor shall make a good faith effort to contract with businesses located in the WMATA compact jurisdiction and to recruit and employ residents of that jurisdiction.

00765 DISADVANTAGED BUSINESS ENTERPRISE

- A. In connection with the performance of this Contract, the Contractor agrees to cooperate with the Authority in meeting its commitments and goals with regard to the maximum utilization of Disadvantaged Business Enterprises (DBE) and further agrees to exert good faith efforts to satisfy the requirements of Section 00453, DBE DATA, by subcontracting portions of the Work to disadvantaged firms, by entering into joint ventures with disadvantaged firms, or both.
- B. The DBE policy of the Authority underwent a complete revision October 1, 1999 to meet revised Federal requirements. The DBE provisions of this RFP are subject to revision by Amendment.
- C. The goal for this Contract is as specified in Section 00865, DISADVANTAGED BUSINESS ENTERPRISE.

00766 UTILIZATION OF SMALL BUSINESS CONCERNS

- A. It is the policy of the Authority that a fair proportion of the purchases and contracts for supplies and services for the Authority be placed with small business concerns.
- B. The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this Contract.

00767 DAVIS BACON AND COPELAND ANTI-KICKBACK ACTS – LABOR PROVISIONS

- A. Minimum Wages:
 - 1. All laborers and mechanics employed or working upon the Site of the Work (or under the United States Housing Act of 1937 or under the Housing-Act of 1949 in the construction or development of the project), shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, 29 C.F.R. Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the Wage Determination of the Secretary of Labor, which is attached hereto and made a part hereof as specified in APPENDIX D to Section 00800, regardless of any contractual relationship which may be alleged-to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. §5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs that cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided at 29 C.F.R. §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time

actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 C.F.R. §5.5(a)(1)(ii) And the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractor at the Site of the Work in a prominent and accessible place where it can be easily seen by the workers.

- a. The Authority will require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Authority will approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - 1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - 2) The classification is utilized in the area by the construction industry, and
 - 3) The proposed wage rate, including bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Authority agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the Contracting Officer Representative to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 Days of receipt and so advise the Authority or will notify the Authority within the 30-Day period that additional time is necessary.
 - c. In the event the Contractor, the laborers, or mechanics to be employed in the classification or their representatives, and the Authority do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Authority will refer the questions, including the views of all interested parties and the recommendation of the Authority to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 Days of receipt and so advise the Authority or will notify the Authority within the 30-Day period that additional time is necessary.
 - d. The wage rate (including fringe benefits where appropriate) determined pursuant to Paragraphs A.1.b and A.1.c above, shall be paid to all workers including helpers performing work in the classification under this Contract from the first day on which work is performed in the classification.
2. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit, which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

3. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor submitted through the Contracting Officer Representative in accordance with Section 01330, SUBMITTAL PROCEDURES, that the applicable standards of the Davis-Bacon act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- B. Withholding: The Authority will, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor, under this Agreement or any other Authority contract with the same recipient, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the Site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee or funds until such violations have ceased.
- C. Payrolls and Basic Records
1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the Site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(b) of the Davis-Bacon act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. §5 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(b) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records, which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
 2. The Contractor shall submit weekly in accordance with Section 01330, SUBMITTAL PROCEDURES, for each week in which any Contract work is performed, a copy of all payrolls to the Authority. The payrolls submitted shall set out accurately and completely

all of the information required to be maintained under 29 C.F.R. §5.5(a)(3)(i). This information may be submitted in any form desired. Optional form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock no. 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all Subcontractors in accordance with Section 01330, SUBMITTAL PROCEDURES.

- a. Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and submit in accordance with Section 01330, SUBMITTAL PROCEDURES and shall certify the following:
 - 1) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. §5.5(a)(3)(i), and that such information is correct and complete;
 - 2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth at 29 C.F.R. Part 3;
 - 3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- b. The weekly submission in accordance with Section 01330, SUBMITTAL PROCEDURES, of a properly executed certification set forth on the reverse side of optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 C.F.R. §5.5(a)(3)(ii)(B).
- c. The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under 18 U.S.C. §1001 and 31 U.S.C. §3729.

D. Apprentices and Trainees

1. The Contractor or Subcontractor shall make the records required under 29 C.F.R. §5.5(a)(3)(i) available for inspection, copying, or transcription by authorized representatives of the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records in accordance with Section 01330, SUBMITTAL PROCEDURES, or make them available, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or make such records available may be grounds for debarment action pursuant to 29 C.F.R. §5.12.

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- a. Apprentices: Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, Training and Employer Labor Services, or with a State apprenticeship agency recognized by the Office, or if a person is employed in his or her first 90 Days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship, Training and Employer Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job Site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship, Training and Employer Labor Services, or a state apprenticeship agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
2. Trainees: Except as provided in 29 C.F.R. §5.16, trainees shall not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the Site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage

and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate, who is not registered and participating in a training plan approved by the employment and training administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the employment and training administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

3. Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under 29 C.F.R. Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order No. 11246, as amended 29 C.F.R. Part 30.
 4. Helpers: Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in 29 C.F.R. §5.5(a)(1)(ii). The allowable ratio of helpers to journeyman employed by the Contractor or Subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each Contractor's or in each Subcontractor's own work force employed on the job site.) Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 C.F.R. §5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.
- E. Contract Termination: Debarment. A breach of the Contract clauses in 29 C.F.R. §5.5 may be grounds for termination of the Contract, and for debarment as a Contractor or a Subcontractor as provided in 29 C.F.R. §5.12.
 - F. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are incorporated herein by reference.
 - G. Disputes Concerning Labor Standards: Disputes arising out of the Labor Standards provisions of this Contract shall not be subject to Section 00729, DISPUTE RESOLUTION, of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this Section include disputes between the Contractor (or any of its Subcontractors) and the Contracting Agency, the U.S. Department of Labor, or the employees or their representatives.
 - H. Certification of Eligibility:

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1. By entering into this agreement or a third party contract financed under this agreement the Contractor certifies that neither it (nor he nor she) nor any person or firm that has an interest in the Contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. §5.12(a)(1).
 2. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 C.F.R. §5.12(a)(1).
 3. The penalty for making false statement is prescribed in the U.S. Criminal code, 18 U.S.C.1001.
- I. Overtime Requirements: Neither the Contractor nor any Subcontractor contracting for any part of the Contract Work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanics in any work week in which he or she is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanics receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such work week.
- J. Violation: Liability for Unpaid Wages: Liquidated Damages: In the event of any violation of the requirements of 29 C.F.R. §5.5(b)(1), the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory) if the Contract is funded by the FTA, and if not, to the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 C.F.R. §5.5(b)(1) In the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by 29 C.F.R. §5.5(b)(1).
- K. Withholding for Unpaid Wages and Liquidated Damages: The FTA or the recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract, or any other Authority contract with the same Contractor or any federally-assisted contract subject to the Contract Work Hours and Safety Standards Act if FTA funding is provided for the Contract, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth at 29 C.F.R. §5.5(b)(2).
- L. Wage Rates:
1. The minimum wages, which in addition to basic hourly rate of pay, include fringe benefit payments to be paid laborers and mechanics on this Project pursuant to this Section as determined by the Secretary of Labor to prevail for corresponding classes of laborers and

mechanics employed on projects similar in character to the Contract work in the pertinent locality, are set forth as an attachment to this Contract.

2. All classes of laborers and mechanics not listed but employed on this Contract shall be classified or reclassified conformably to the schedule set out therein by mutual agreement between the Contractor and class of labor concerned, subject to prior approval of the Contracting Officer Representative. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborer and mechanics to be used, the question, accompanied by the recommendation of the Contracting Officer Representative, shall be referred to the Secretary of Labor for final determination.
 3. For Current Wage Modifications, Refer to Appendix D - WAGE DETERMINATION OF THE SECRETARY OF LABOR, included as an Appendix to Section 00800, SUPPLEMENTARY CONDITIONS.
- M. Subcontracts: The Contractor or Subcontractor shall insert in all Subcontracts, the clauses set forth in Paragraphs A through M of this Section 00767, DAVIS BACON AND COPELAND ANTI-KICKBACK ACTS - LABOR PROVISIONS, and a clause requiring the Subcontractor to include these clauses in all lower tier Subcontracts. The Contractor shall be responsible for compliance by all Subcontractors with Paragraphs A through N of this Section 00767, DAVIS BACON AND COPELAND ANTI-KICKBACK ACTS - LABOR PROVISIONS.

00768 WALSH-HEALEY PUBLIC CONTRACTS ACT

- A. If this Contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount, which exceeds or may exceed \$10,000 and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:
1. All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may be hereafter, be in effect.
 2. All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped worker may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

00769 NOTICE TO THE AUTHORITY OF LABOR DISPUTES

- A. Whenever the Contractor has knowledge that an actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof in accordance with Section 01330, SUBMITTAL PROCEDURES, including all relevant information with respect thereto, to the Contracting Officer Representative.
- B. The Contractor agrees to insert the substance of this Section 00769, NOTICE TO THE AUTHORITY OF LABOR DISPUTES, in all Subcontracts hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such Subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify its next higher tier Subcontractor, or the Contractor, as the case may be, of all relevant information with respect to such dispute.

00770 CONVICT LABOR

- A. In connection with the performance of work under this Contract, the Contractor agrees not to employ any person serving a sentence of imprisonment at hard labor.

00771 FEDERAL, STATE, AND LOCAL TAXES

- A. The Contract Price includes all applicable Federal, State, and local taxes and duties.
- B. Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this Contract, if a statute, court decision, written ruling, or regulation takes effect after the Contract Date and results in the following:
 - 1. The Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof, which would not otherwise have been payable on such transactions or property, the Contract Price shall be increased by the amount of such tax or duty or rate increase, provided the Contractor warrants in writing in accordance with Section 01330, SUBMITTAL PROCEDURES, that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract Price as a contingency reserve or otherwise; or
 - 2. The Contractor not being required to pay or bear the burden of, or in its obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the Contract Price, the Contract Price shall be decreased by the amount of the relief, refund, or drawback, or that amount of the relief, refund, or drawback, or that amount that shall be paid to the Authority, as directed by the Contracting Officer Representative. The Contract Price shall be similarly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer Representative, is required to pay or bear the burden of, or does not obtain a refund or drawback or, any such Federal excise tax or duty.

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- C. Paragraph B above shall not be applicable to Social Security taxes or to any other employment tax.
 - D. No adjustment of less than \$100 shall be made in the Contract Price pursuant to Paragraph B above.
 - E. As used in Paragraph B above, the term Contract Date means the date set for Bid opening. As to additional supplies or services procured by Modification to this Contract, the term Contract Date means the date of such Modification.
 - F. Unless there does not exist any reasonable basis to sustain an exemption, the Contracting Officer Representative, upon the request of the Contractor in accordance with Section 01330, SUBMITTAL PROCEDURES, shall, without further liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax; provided that, evidence appropriate to establish exemption from and Federal excise tax or duty, which may give rise to either increase or decrease in the Contract Price will be furnished only at the discretion of the Contracting Officer Representative.
 - G. The Contractor shall promptly notify the Contracting Officer Representative in accordance with Section 01330, SUBMITTAL PROCEDURES, of matters, which will result in either an increase or decrease in the Contract Price, and shall take action with respect thereto as directed by the Contracting Officer Representative.

00772 ADDITIONAL BOND SECURITY

- A. For information on Additional Bond Security, see Section 00613, PERFORMANCE AND PAYMENT BONDS (Additional Bond Security).

00773 PATENT AND COPYRIGHT INDEMNITY

- A. In addition to any other indemnification provided in this Contract, the Contractor agrees to defend, hold harmless, and indemnify the Authority and its officers, representatives, agents, and employees acting within the scope of their official duties, from and against any and all Claims, demands, liabilities, damages, losses, costs, and expenses (including, but not limited to, court costs, and reasonable attorney's fees and expenses) of any nature whatsoever in any way arising out of infringement upon any Letters of Patent of the United States arising out of the performance of this Contract or out of the use or disposal by or for the account of the Authority of supplies furnished or work performed hereunder. Similarly, the Contractor indemnifies the Authority from all claims of copyright infringement resultant from actions of the Contractor or any of its Subcontractors or Suppliers. Nothing in this Section shall be construed to require any indemnification, which would make this Section void or unenforceable or to eliminate or reduce any indemnification or rights, which the Authority or Contractor has by law.

00774 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

- A. The Contractor shall report to the Contracting Officer Representative in accordance with Section 01330, SUBMITTAL PROCEDURES, promptly and in reasonable written detail, each

notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

- B. In the event of any action, Claim, or suit against the Authority on account of any alleged patent or copyright infringement arising out of or related to the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Authority in accordance with Section 01330, SUBMITTAL PROCEDURES, when requested by the Contracting Officer Representative, all evidence and information in possession of the Contractor pertaining to such action, suit, or Claim. Such evidence and information shall be furnished at the expense of the Authority except where the Contractor has agreed to defend, indemnify, or hold harmless the Authority. This Section shall be included in all Subcontracts.

00775 AUTHORITY RIGHTS IN TECHNICAL DATA

- A. All, designs, drawings, specifications, Samples, processes (including Computer Software), laboratory testing analyses and reports, notes, As-Built Drawings produced during and after completion of construction and other work produced in the performance of this Contract, or in the contemplation or implementation thereof shall be and remain the sole property of the Authority and may be used on any other work without additional cost to the Authority. Any re-use of design services shall be at the Authority's sole risk and with respect thereto, the Contractor agrees not to assert any rights or to establish any claim under the design patent or copyright laws and not to publish or reproduce such matter in whole or in part or in any manner or form, or authorize others so to do, without the written consent of the Authority until such time as the Authority may have released such matter to the public. Further, with respect to any design or process, which the Authority desires to protect by applying for and prosecuting a design patent application, or otherwise, the Contractor agrees to furnish the Authority such duly executed instruments and other papers (prepared by the Authority) as are deemed necessary to vest in the Authority the rights granted it pursuant to this Section. The Contractor, for a period of 3 years after completion of the Project or task, agrees to furnish and to provide access to the originals or copies of all such materials on the request of the Authority.
- B. Rights in Technical Data:
1. The Authority shall have the right to use, duplicate, or disclose Technical Data, which includes, without limitation, computer software and other items listed below, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:
 - a. All manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - b. Technical Data pertaining to end items, components or processes, which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing; except that for computer software it means data identifying source, functional characteristics, and performance requirements but

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- specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
- c. Other Technical Data, which has been, or is normally furnished without restriction by the Contractor or Subcontractor;
 - d. Other specifically described Technical Data, which the parties have agreed will be furnished without restriction.
- C. The Authority shall have the right to use, duplicate, or disclose Technical Data other than that defined in Paragraph B.1.a above, in whole or in part, with the express limitation that such Technical Data shall not, without the written permission of the party furnishing such Technical Data, be:
1. Released or disclosed in whole or in part outside the Authority;
 2. Used in whole or in part by the Authority for manufacture; or
 3. Used by a party other than the Authority except for emergency repair or overhaul work only, by or for the Authority where the item or process concerned is not otherwise reasonably available to enable timely performance of the Work; provided, that the release or disclosure thereof outside the Authority shall be made subject to a prohibition against further use, release, or disclosure.
 4. Technical Data provided in accordance with the provisions of Paragraph B.1.b above shall be identified by a legend, which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
 5. The term Technical Data as used in this Section means technical writing, Computer Software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract in accordance with Section 01330, SUBMITTAL PROCEDURES, and Section 01775, CLOSEOUT. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer Software as used in this Section means computer programs, computer databases, and documentation thereof.
 6. Material covered by copyright:
 - a. The Contractor agrees to and does hereby grant to the Authority, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Technical Data now or hereafter covered by copyright.
 - b. No such copyrighted matter shall be included in Technical Data furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.

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- c. The Contractor shall report to the Authority promptly, and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to any Technical Data delivered hereunder.
 - d. Relation to patents: Nothing contained in this Section shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
 - e. Any dispute under this Section shall be subject to Section 00730, DISPUTE RESOLUTION.
 - f. Notwithstanding any other payment provision in this Contract, the Authority may retain from payment up to 10 percent of the Contract Price until final delivery and acceptance of the Technical Data defined in this Section and as required to be furnished by the Contract Documents.

00776 TECHNICAL DATA - WITHHOLDING OF PAYMENT

- A. If Technical Data, specified to be delivered under this Contract, is not delivered within the time specified by this Contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this Contract), the Authority may until such data is accepted by the Authority, withhold payment to the Contractor of 10 percent of the total Contract Price or amount unless a lesser withholding is specified in the Contract. Payments will not be withheld nor any other action taken pursuant to this Paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of or is beyond the control and without the fault or negligence of the Contractor.
- B. After payments total 90 percent of the total Contract Price or amount and if all Technical Data specified to be delivered under this Contract has not been accepted, the Authority may withhold from further payment, in addition to other withholdings specified elsewhere, such sum as it considers appropriate, not exceeding 10 percent of the total Contract Price or amount unless a lesser withholding limit is specified in the Contract.
- C. The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Authority under this Contract.

00777 INDEMNIFICATION AND INSURANCE REQUIREMENTS

- A. Indemnification:
 - 1. Contractor shall indemnify, defend, and hold harmless the Authority, its directors, officers, employees, and agents from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and the Authority, occurring in connection with, or in any way arising out of the use, occupancy and performance of the Work and any acts in connection with activities to be performed under this Contract, unless the loss or damage is due to the sole negligence of the

Authority. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.

2. Contractor shall indemnify, defend, and hold harmless the Authority, its directors, officers, employees, and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys fees related to, arising from, or attributable to any effluent or other hazardous waste, residue, contaminated soil, or other similar material discharged from, removed from, or introduced on, about, or under the job Site; provided, however, that the foregoing indemnity does not apply to loss or damage due to preexisting conditions, whether known or unknown.
 3. If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.
 4. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.
- B. The Contractor shall provide the Authority with evidence of its Contractor's insurance coverage for the exposures listed.
1. The Contractor shall have its insurance agent or broker forward to the Authority's Contracting Officer an insurance certificate or certificates evidencing the required insurance, and the Additional Insured endorsement adding Authority as Additional Insured covering Contractor's ongoing and completed operations. Insurance companies providing the coverage must have an A.M. Best rating of at least "A-/VII." Authority's Contracting Officer shall be provided 30 Days written notice if any required insurance is canceled, materially changed, or non-renewed. The Contractor shall furnish the Contracting Officer (prior to NTP) or the Contracting Officer Representative (after NTP) with a certified copy of each insurance policy upon request.
 2. The initial and subsequent certificates of insurance shall include a description of the Contract Work and the assigned Contract number. Prior to beginning any Project Work, the insurance requirements as outlined by Authority's Office of Insurance must be approved in writing.
 3. Procure all insurance from insurance companies licensed and authorized to conduct business in the District of Columbia, State of Maryland, and Commonwealth of Virginia.

Authority approval or disapproval of insurance furnished by the Contractor shall not release the Contractor of full responsibility for liability for damage and accidents.

4. If at any time the above required insurance policies should be canceled or materially modified so that the insurance is not in full force and effect as required herein, the Authority reserves the right to terminate this Contract between Authority and Contractor.
 5. Require each Subcontractor, at all tiers, to provide evidence of insurance coverage with types and limits of insurance as the Contractor sees fit for the work the Subcontractor is performing, and with the Authority added as an Additional Insured on Subcontractors' Commercial General Liability and Auto Liability certificates of insurance. Provide Subcontractor certificates of insurance and Additional Insured endorsements to the Contracting Officer Representative prior to commencement of work.
 6. Furnish the required certificates of insurance and Additional Insured endorsement as specified herein within 10 Days after the date of receipt of Award. If the required certificates of insurance and Additional Insured endorsement as specified herein are not furnished within 10 Days after the date of receipt of Award, the Authority may elect to issue NTP to the Contractor but the Contractor will not be permitted to enter upon the Site to perform the Work until all required insurance certificates or evidence of self-insurance have been received.
 7. The Contractor will not be paid for providing insurance for this Project as prescribed in this Contract, but the insurance cost thereof shall be included in the prices for the various items as set forth in the Bid Schedule.
- C. Required Insurance:
1. Commercial General Liability (CGL) Insurance with limits of \$2,000,000 per occurrence/aggregate, written on an occurrence form. If the required limits can only be met when applying an umbrella/excess liability policy, the umbrella/excess liability policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event the primary limits are reduced or aggregate limits are exhausted. Commercial General Liability Insurance shall include:
 - a. The Contractual Liability Exclusion (applicable to work to be performed within 50 feet of railroad property) must be removed.
 - b. The coverage under such an insurance policy or policies shall be maintained throughout the Period of Performance and for 3 years following acceptance of the work if the CGL Insurance is written on a claims made form.
 - c. WMATA shall be named an Additional Insured with respect to this agreement on all certificates of insurance (COI), and the Additional Insured endorsement shall include completed operations and be submitted to the Authority.
 - d. Terrorism coverage: XCU coverage (explosion, collapse, and underground hazards) shall be included if the Work involves excavation or blasting.

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2. Workers' Compensation Insurance meeting the statutory requirements of the jurisdiction where the work will be performed, including Employer's Liability coverage with limits of \$1,000,000 each accident or disease.
 3. Business Automobile Liability Insurance with minimum combined single limits of \$2,000,000 per occurrence covering Contractor against claims for bodily injury and property damage arising out of the ownership, maintenance or use of any owned, hired, or non-owned motor vehicle. The Authority shall be added as an additional insured on the policy.
 4. Railroad Protective Liability Insurance (RRP) issued to the Authority as the Named Insured with minimum limits of \$2,000,000 per occurrence/\$6,000,000 aggregate and covering the liability of the Authority arising from all Contracting Parties' work to be performed within 50 feet (on, above, adjacent to or underneath) of the Authority's railroad tracks or within Authority rail stations for any personal injuries or deaths or any damage to the property, equipment and facilities caused by the activities of any Contractor or Subcontractor resulting from performance of the Work.
 5. Authority Blanket RRP Program Option for Contracts under \$5,000,000: The Authority will offer to waive the requirement for the Contractor to procure RRP if 1) the work can be covered under the Authority's blanket RRP program, and 2) the Contractor prepays the premium which shall be determined by the rate schedule promulgated by the insurer in effect as of the effective date of this Contract. Contractor shall be advised of and pay the applicable premium, or procure a standalone RRP policy on the Authority's behalf. Contracts over \$5,000,000 may be covered under the Blanket Program, but must first be reviewed by the underwriter.
 6. Terrorism coverage
 - a. Said policy shall remain in force until the construction is completed and Accepted. The policy shall name Authority as an Additional Named Insured and Loss Payee as its interest may appear. The endorsement adding the Authority should state that the First Named Insured is solely responsible for premium payment.

00778 LIQUIDATED DAMAGES

- A. The Contractor understands that if it fails to complete portions or all of the Work as described in Section 00724, PERIOD OF PERFORMANCE AND PROJECT SCHEDULE, the Authority will suffer damages, which have been estimated and are specified in Section 00878, LIQUIDATED DAMAGES.
- B. The Contractor agrees that if it does not complete the Work within the specified Contract Performance Time, then the Contractor shall pay to the Authority as liquidated damages, pursuant to Section 00727, TERMINATION FOR DEFAULT, DAMAGES FOR DELAY, AND TIME EXTENSIONS, the sums per Day as separate damages for each specified completion requirement. Milestones are as defined in Section 00724, PERIOD OF PERFORMANCE AND PROJECT SCHEDULE.

00779 NOT USED

00780 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- A. Overtime requirements: Neither the Contractor nor any Subcontractor contracting for any part of the Contract Work, which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic apprentice, trainee, watchman, or guard in any work week in which he or she is employed on such work to work in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act, unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than 1-1/2 times his or her basic rate of pay for all such hours worked in excess of 40 hours in such work week.
- B. Violation, liability for unpaid wages, and liquidated damages. In the event of any violation of the provisions of Paragraph A above, the Contractor and any Subcontractor responsible therefor shall be liable to any affected employee for unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of Paragraph A in the sum of 10 dollars for each Day on which such employee was required or permitted to be employed on such work in excess of his or her standard work week of 40 hours without payment of the overtime wages required by Paragraph A.
- C. Withholding for unpaid wages and liquidated damages: The Contracting Officer Representative may withhold from the Contractor, from any moneys payable on account of work performed by the Contractor or Subcontractor, such sums as may be administratively determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the provisions of Paragraph B.
- D. Subcontracts: The Contractor shall insert Paragraphs A through E of this Section in all Subcontracts and shall require their inclusion in all Subcontracts of any tier.
- E. Records: The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for 3 years from completion of this Contract.

00781 EQUITABLE ADJUSTMENT FOR MINOR CONTRACT MODIFICATIONS

- A. Where the Contracting Officer and Contractor agree to a net additional or deductive amount of direct costs for a Modification to this Contract made pursuant to articles of this Contract titled CHANGES, DIFFERING SITE CONDITIONS, or VALUE ENGINEERING INCENTIVE, which amount does not exceed \$100,000 and further agree to an adjustment in Period of Performance resulting from said Modification which increases or decreases the completion date 10 Days or less, the equitable adjustment in Contract Price shall consist of the following:
 - 1. Direct costs as agreed to by the Contracting Officer and Contractor.
 - 2. Job Office Overhead costs, the sum of which shall be limited to a maximum of 10 percent of direct labor costs, including fringe benefits, but excluding FICA, FUTA, and State

Unemployment Insurance (SUI); 10 percent of direct material costs; 5 percent of direct equipment costs (small tools, defined as equipment less than \$1,000 in acquisition costs, are included and computed at 5 percent of direct base labor wages.); 5 percent of Subcontract costs.

3. Home Office General and Administrative (G&A) costs, the sum of which shall be limited to a maximum of 3 percent of the direct costs plus job office overhead costs computed as above.
 4. Profit will be determined in accordance with the guidelines specified in the Section 00748, CHANGES.
- B. In using the above rates, the following shall apply:
1. Payroll Tax (FICA, FUTA, and SUI) amounts are added immediately after direct and indirect costs are totaled.
 2. Subcontractors' indirect costs and profit shall be computed in the same manner as above.
 3. Indirect costs shall not be duplicated in direct costs.
 4. When the change in Period of Performance is increased, the change in Contract Price for direct and indirect costs computed by application of the above rates includes costs of impact and extended performance due to the time extension and no further consideration of costs arising from the specific Modification and cited Pending Change Orders (PCOs) will be given.
 5. Bond will be allowed at actual cost without markup.

00782 NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD-PARTIES BY USE OF A DISCLAIMER

- A. The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include this clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

00783 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U. S. C. 3801 et seq. and U. S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F. R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the

underlying contract or the FTA-assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U. S. C. 5307, the Government reserves the right to impose the penalties of 18 U. S. C. 1001 and 49 U. S. C. 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include this clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

00784 FEDERAL CHANGES

- A. The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (14) dated October 1, 2007) between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.
- B. The Contractor agrees to include this clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

00785 INCORPORATION OF FTA TERMS

- A. The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or any revisions thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause the Authority to be in violation of the FTA terms and conditions.
- B. The Contractor agrees to include this clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

00786 ENERGY CONSERVATION

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- A. The Contractor agrees to comply with mandatory standards and policies relating to the energy efficiency, which are contained in the applicable state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
 - B. The Contractor agrees to include the requirements of this clause in all Subcontracts under this Contract.

00787 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

- A. The Contractor is bound by its certification contained in its offer to the Authority that the Contractor and none of its principals or affiliates are excluded or disqualified, as defined at 49 C.F.R. 29.940 and 29.945. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C, throughout the term of this Contract.
- B. The Contractor agrees to include this requirement in all Subcontracts at all tiers under this Contract.

00788 ADDITIONAL FEDERAL REGULATIONS AND CLAUSES

A. Fly America Requirements

1. The Contractor agrees to comply with 49 U. S. C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U. S. Flag carriers for U. S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U. S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this Paragraph in all Subcontracts that may involve international air transportation.

B. Buy America Requirements

1. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

C. Cargo Preference Requirements

1. The Contractor agrees:
 - a. to utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping equipment, materials, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
 - b. to furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in Paragraph C.1.a above to the Authority (through the Contractor in the case of a Subcontractor's bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, and
 - c. to include these requirements in all Subcontracts issued pursuant to this Contract when the Subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

D. Seismic Safety Requirements

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1. The Contractor agrees that any new building or addition to an existing building will be constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

E. Energy Conservation Requirements

1. The Contractor agrees to comply with mandatory standards and policies relating to the energy efficiency, which are contained in the applicable state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
2. The Contractor agrees to include the requirements of this clause in all Subcontracts under this Contract.

F. Clean Water Requirements

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U. S. C. 1251 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

G. Lobbying

1. The Contractor is bound by its certification contained in its Bid to the Authority regarding the use of federal or non-federal funds to influence, or attempt to influence any Federal officer or employee regarding the award, execution, continuation, or any similar action of any Federal grant or other activities as defined in 31 U.S.C. 1352, 49 CFR Part 19, or 49 C.F.R. Part 20. The Contractor agrees to comply with this requirement throughout the term of the Contract.
2. The Contractor agrees to include these requirements in all Subcontracts at all tiers under this Contract.

H. Access to Records and Reports

1. The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives, access to any books, documents, papers, and records of the Contractor, which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor also agrees, pursuant to 49 CFR. 633.17 to provide the FTA Administrator or its authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U. S. C. 5307, 5309 or 5311.

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2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 3. Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than 3 years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of Claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, Claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
 4. The Contractor further agrees to include in all its Subcontracts hereunder, a provision to the effect that the Subcontractor agrees that the Contracting Officer, and the Comptroller General of the United States and the United States Secretary of Transportation if applicable, or their duly authorized representatives, shall until the expiration of 3 years after Final Payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Subcontractor involving transactions related to the Subcontract, for the purpose of making audit, examination, excerpts, and transcription. The term "Subcontract," as used in this Section, excludes:
 - a. Purchase Orders not exceeding \$100,000 and,
 - b. Subcontracts or Purchase Orders for public utility services at rates established from standard costs applicable to the public.

I. Federal Changes

1. The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (14) dated October 1, 2007) between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.
2. The Contractor agrees to include this clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

J. Clean Air

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U. S. C. §§ 7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

K. Recycled Products

1. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA) as amended (42 U. S. C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
2. The Contractor also agrees to include these requirements in each Subcontract financed in whole or in part with Federal assistance provided by FTA.

L. No Government Obligation to Third Parties

1. The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include this clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

M. Program Fraud and False or Fraudulent Statements and Related Acts

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U. S. C. 3801 et seq. and U. S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F. R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U. S. C. 5307, the Government reserves the right to impose the penalties of 18 U. S. C. 1001 and 49 U. S. C. 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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3. The Contractor agrees to include this clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

N. Government-wide Debarment and Suspension (Non-procurement)

1. The Contractor is bound by its certification contained in its offer to the Authority that the Contractor and none of its principals or affiliates are excluded or disqualified, as defined at 49 C.F.R. 29.940 and 29.945. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C, throughout the term of this Contract.
2. The Contractor agrees to include this requirement in all Subcontracts at all tiers under this Contract.

O. Disadvantaged Business Enterprises (DBE)

1. In connection with the performance of this Contract, the Contractor agrees to cooperate with the Authority in meeting its commitments and goals with regard to the maximum utilization of Disadvantaged Business Enterprises (DBE) and further agrees to exert good faith efforts to satisfy the requirements of Section 00453, DBE DATA, by subcontracting portions of the Work to disadvantaged firms, by entering into joint ventures with disadvantaged firms, or both.
2. The DBE policy of the Authority underwent a complete revision October 1, 1999 to meet revised Federal requirements. The DBE provisions of this IFB are subject to revision by Amendment.
3. The DBE goal for this Contract is as specified in Section 00888, DISADVANTAGED BUSINESS ENTERPRISE.

P. Incorporation of Federal Transit Administration (FTA) Terms

1. The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or any revisions thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause the Authority to be in violation of the FTA terms and conditions.

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2. The Contractor agrees to include this clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

Q. SEAT BELT USE POLICY

1. The Contractor agrees to comply with terms of Executive Order No. 13043 "Increasing Seat Belt Use in the United States" and is encouraged to include those requirements in each Subcontract awarded for work relating to this Contract.

R. WHISTLEBLOWER PROTECTIONS

1. The Contractor and all Subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, information that the employee reasonably believes is evidence of reports of fraud, waste, gross mismanagement, abuse of authority, violations of law, and threats to health, safety, and security.
 - a. Under the National Transit Systems Security Act (NTSSA), 6 U.S.C. §1142, employees of Metro contractors or subcontractors may file a complaint of discrimination with the U.S. Department of Labor, for lawfully and in good faith:
 - i. reporting a hazardous safety or security condition;
 - ii. refusing to work when a hazardous safety or security condition presents an imminent danger of death or serious injury; there is no reasonable alternative to refusal; there is not sufficient time to eliminate the danger in absence of refusal; and the individual, where possible, has notified the Metro contractor or subcontractor of the condition and of the intent to not perform work;
 - iii. refusing to authorize the use of any safety or security related equipment, track or structures, if the individual is responsible for their inspection or repair and reasonably believes they are in a hazardous safety or security condition; there is no reasonable alternative to refusal; there is not sufficient time to eliminate the danger in absence of refusal; and the individual, where possible, has notified the Metro contractor or subcontractor of the condition and of the intent not to authorize use of hazardous equipment or infrastructure unless corrected;
 - iv. providing information for or directly assisting in an investigation of conduct that the individual reasonably believes to be in violation of Federal law regarding safety, security, or fraud, waste, or abuse of funds intended for safety or security;
 - v. refusing to violate or assist in violation of Federal safety or security law;
 - vi. cooperating with a safety or security investigation by the U.S. Secretary of Transportation, U.S. Secretary of Homeland Security, or the National Transportation Safety Board;
 - vii. furnishing information to law enforcement agencies relating to an accident or incident resulting in damage to property, injury, or death; or

viii. filing a complaint under the NTSSA or testifying regarding such complaint.

- b. Under the American Recovery and Reinvestment Act (ARRA), Public Law 111-5, § 1553, employees of Metro contractors or subcontractors may file a complaint of discrimination with the Inspector General of the appropriate federal agency for reporting to supervisors and other authorized individuals and agencies evidence that the individual reasonably believes demonstrates:
 - i. gross mismanagement of an ARRA project;
 - ii. gross waste of ARRA funds;
 - iii. a substantial and specific danger to public health and safety related to an ARRA project;
 - iv. violation of law relating to ARRA funds or an ARRA project; or
 - v. abuse of authority related to the implementation of ARRA funds.
2. The Contractor will be required to post a notice of the rights and remedies provided to employees under Section 1553 of the American Recovery and Reinvestment Act of 2009. The Contractor also agrees to include these requirements in each Subcontract financed in whole or in part with Covered Funds. The notice must substantially comply with the sample notice, which may be downloaded at:

[http://www.recovery.gov/sites/default/files/Whistleblower + Poster.pdf](http://www.recovery.gov/sites/default/files/Whistleblower%20Poster.pdf)

S. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a.
 - a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
 - b. The Contractor agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

T. DRUG AND ALCOHOL TESTING

1. The Contractor and Subcontractors providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. Section 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

00789 PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT

- A. WMATA requires that all contractor employees and candidates for employment undergo and pass criminal background screenings before being eligible to work on WMATA property and facilities. See Section 01116. Contractor employees and candidates who pass the background screenings are eligible to enter WMATA property once WMATA issues them a contractor badge. Contractor employees and candidates who do not authorize background screenings or whose background screenings are unsatisfactory will not be granted contractor badges or access to WMATA property. Contractor must also complete Appendix H Acknowledgement and Authorization for Background Screening.

END OF SECTION

Section 00800

SUPPLEMENTARY CONDITIONS

This Section includes Modifications to the Section 00700, GENERAL CONDITIONS, for requirements unique to a specific project and is hereby incorporated into the General Conditions by reference. This Section 00800, SUPPLEMENTARY CONDITIONS, which specifies modifications to the General Conditions, shall be read in conjunction with Section 00700, GENERAL CONDITIONS, and which will be cited in Section 00700, GENERAL CONDITIONS, using the same last two digits of the Section number; i.e., a modification to Section 00724, COMMENCING THE WORK, is indicated as Section 00824, COMMENCING THE WORK.

00800 GENERAL CONDITIONS

Modify first Paragraph Section 00700 to delete the entire paragraph and substitute the following Paragraph:

This Section includes a compilation of contractual and legal requirements that list the rights, responsibilities, and relationships of the parties to a Contract and defines duties and limits of authority for construction management in performance of contract administration. This Section shall be read in conjunction with Section 00800, Supplementary Conditions, which specifies modifications to these General Conditions, and which will be cited using the same last 2 digits of the Section number; i.e., a modification to Section 00724 will be indicated as Section 00824.

00801 DEFINITIONS

Modify Line 19 in Section 00701 to delete in its entirety and substitute the following Line:

19. Not Used

Modify Line 22 in Section 00701 to delete in its entirety and substitute the following Line:

22. General Conditions: A compilation of contractual and legal requirements that lists the rights, responsibilities, and relationships of the parties to a contract and defines duties and limits of authority for construction management in performance of contract administration.

Modify Line 23 in Section 00701 to delete in its entirety and substitute the following Line:

23. General Requirements: A compilation of the conditions and performance requirements (Division 1) peculiar to the specific contract that govern the execution of the construction work.

Modify Line 54 in Section 00701 to delete in its entirety and substitute the following Line:

54. Work: All construction services, including supervision, quality control and quality assurance, labor, materials, machinery, equipment, tools, supplies and facilities required to complete the Project, or the various separately identifiable parts thereof including but not limited to Safety, Security, System Safety Certification and Commissioning requirements, in accordance with the terms of the Contract.

00803 GENERAL REQUIREMENTS, DRAWINGS, AND SPECIFICATIONS

Modify Section 00703, GENERAL REQUIREMENTS, DRAWINGS, AND SPECIFICATIONS to delete Paragraph F. and substitute the following Paragraph:

- F. Should it appear that the Work to be performed is not sufficiently detailed or explained in the Contract Documents, then the Contractor shall promptly apply to the Contracting Officer Representative in writing in accordance with Section 01330, SUBMITTAL PROCEDURES, for such written explanations as may be necessary and shall conform to the explanation provided. The Contractor shall promptly notify the Contracting Officer Representative in accordance with Section 01330, SUBMITTAL PROCEDURES, of all errors, omissions, inconsistencies, or other defects including inaccuracies, which it may discover in the Contract Documents, and shall provide options to the Contracting Officer Representative to remedy such errors, omissions, or other defects, and shall obtain in writing from the Contracting Officer Representative specific instruction regarding any such error, omission, or defect before proceeding with the work affected thereby. Omission of details of the Work from the Contract Documents or the mis-description of details of work, which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve the Contractor from performing such omitted work, no matter how extensive, or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Modification hereunder.

00804 INTENT OF CONTRACT

Modify Section 00704, INTENT OF CONTRACT to delete Paragraph C and substitute the following Paragraph:

- C. The Contractor accepts the relationship of trust and confidence established between it and the Authority by the Contract. The Contractor agrees to furnish the construction services set forth herein, and agrees to furnish efficient business administration and superintendence, including quality control and quality assurance, and use its best efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the requirements of the Contract Documents.

Modify Section 00704, INTENT OF CONTRACT to delete Paragraph E and substitute the following Paragraph:

- E. Nothing contained in these Contract Documents shall create a contractual relationship between the Authority and any party other than the Contractor. However, it is understood

and agreed that the Authority is an intended third party beneficiary of all contracts for construction services and all such Subcontracts, purchase orders, and other agreements between the Contractor and third parties related to those services. The Contractor shall incorporate the obligations of this Contract into its respective Subcontracts, supply agreements, and purchase orders.

00808 REQUIREMENTS FOR PROFESSIONAL REGISTRATION

Modify Section 00708, REQUIREMENTS FOR PROFESSIONAL REGISTRATION to delete Paragraph A in its entirety.

00810 WORK BY CONTRACTOR

Modify Section 00710, WORK BY CONTRACTOR, to delete Paragraph A. and substitute the following Paragraph:

- A. The Contractor shall perform, with its own organization, work equivalent to at least 51% of the value for the construction work.

00811 SUBCONTRACTOR AGREEMENTS

Modify Section 00711, SUBCONTRACTOR AGREEMENTS, to delete Line 2 and substitute the following Line:

2. No Subcontractor will be permitted to perform work at the Site until the Subcontractor, or the Builder, in compliance with the provisions of Section 00777, INDEMNIFICATION AND INSURANCE REQUIREMENTS, has furnished satisfactory evidence of insurance as required.

00819 AUTHORITY REVIEWS

Modify Section 00719, AUTHORITY REVIEWS to delete Paragraph D and substitute the following Paragraph:

- D. The Authority reserves the right to review Submittals and to disapprove any Submittal when, in its sole judgment, the Submittal deviates from the requirements of the Contract Documents and compromises the integrity of the construction element. The Authority's review, Approval, or acceptance of any Submittal required under this Contract shall not be construed to operate as a waiver of the Contractor's responsibility for the professional quality, technical accuracy, and the coordination of all drawings, specifications, construction, and other services provided by the Contractor under this Contract.

00822 QUALITY ASSURANCE / QUALITY CONTROL

Modify Section 00722 QUALITY ASSURANCE / QUALITY CONTROL to delete Line 3 in its entirety.

00824 PERIOD OF PERFORMANCE AND PROJECT SCHEDULE

Modify Section 00724, PERIOD OF PERFORMANCE AND PROJECT SCHEDULE, to delete Paragraphs A, B and C and substitute the following Paragraph and subparagraphs:

- A. The Contractor shall perform, complete, and advance all Work under this Contract in accordance with the schedule set out:
 - 1. Interim & Final Work Completion: 365 calendar days (cds)
 - a. Milestone 1: Shop Drawings and Technical /Product Submittals – All shop Drawings and Technical or Products/Material submittals are to be submitted to WMATA at the 100% for final level of progression, NTP +75 cds
 - b. Milestone 2: Substantial Completion Form – All major construction activities are completed. Substantial Completion Inspection form is signed by WMATA COTR, NTP +270 cds
 - c. Milestone 3: Punch List Completed – Complete all punch list items. Site is fully restored and returned to WMATA for unrestricted use, NTP +300 cds
 - d. Contractor’s access to the Farragut North Station platform shall be limited to no more than 170 calendar days from the first day of access to the platform to the completion of all punch list work.
- B. The Authority may modify the Contract, pursuant to Section 00748, CHANGES, to extend the Period of Performance as often and in time periods as deemed necessary until completion of the Work under this Contract.
- C. Early Completion: If the Contractor submits, in accordance with Section 01332, CONTRACT PROGRESS REPORTING, a schedule or expresses an intention to complete the Work earlier than any required Milestone, interim, or Final Completion date, the Authority shall not be liable for any costs incurred because of delay or hindrance should the Contractor be unable to complete the Work before such Milestone, interim or Final Completion date. The duties, obligations, and warranties of the Authority to the Contractor shall be consistent with and applicable only to the completion of the Work and completion dates set forth in this Contract.

00828 TERMINATION FOR THE CONVENIENCE OF THE AUTHORITY

Modify Section 00728 TERMINATION FOR THE CONVENIENCE OF THE AUTHORITY to delete Sub-paragraph c under Paragraph F Line 1 and substitute the following Sub-paragraph:

- c. A sum, as profit on Paragraph D above, determined by the Contracting Officer to be fair and reasonable, provided, however, that the Contracting Officer allows no anticipated profit on services not performed by the Contractor, and, further, if it appears that the Contractor

would have sustained a loss on the entire Contract had it been completed, no profit will be included or allowed, and an appropriate adjustment will be made reducing the amount of the settlements to reflect the indicated rate of loss; and

00830 DISPUTE RESOLUTION

Modify Section 00730, DISPUTE RESOLUTION, to add the following Paragraphs and subparagraphs:

A. Disputes Review Board and Procedures

1. Disputes Review Board (DRB) shall be established within 60 Days after the Contract Award has been issued to the Contractor. The DRB shall consist of one member selected by the Authority, one member selected by the Contractor, and a third member, who shall be the chairperson, selected by the first two members. The selection of qualified DRB members shall be made in accordance with the following rules and procedures.

a. Rules and Procedures

- (1) All DRB members shall have substantial experience with the type of construction involved in the Contract and in the interpretation of construction Contract Documents. The goal in selecting the chairperson is to complement the experience of the first two members, thus furnishing technical as well as administrative expertise that will facilitate the DRB's operations.
- (2) The specific qualifications and requirements for membership on the DRB shall be as follows:
 - (a) The candidate member shall have commensurate formal/technical education and experience in one or more of the fields of construction, engineering, or architecture.
 - (b) Except for payment of services as a DRB member, excluding fee-based consulting services on other projects, or for roles identical or similar to DRB membership, [1] no voting DRB member shall have a) employment with, an ownership interest in, or existing business or financial relationship with, any party to the Contract including designers and other consultants; or b) a financial interest in the Contract.
 - (c) During the term of membership on the DRB, no discussion of or agreement for employment after the Contract is completed shall occur or be made between any DRB member and any party to the Contract.
- (3) Before their appointments are made, the first two DRB candidate members shall submit complete disclosure statements for review and Acceptance by the Contracting Officer and the Contractor. Each

statement shall include [1] resume of experience and education; [2] a detailed description of all past, present, and planned future relationship(s) to the Authority's Rail Capital Construction Program or with any party involved in the Contract, including any fee-based consulting services on any other projects; and [3] certification that the prospective member meets the qualifications set forth above. The chairperson shall supply such a disclosure statement to the first two DRB members and to the Contracting Officer and the Contractor before his or her appointment as chairperson is approved and finalized.

b. Selection of Members

- (1) The Contracting Officer and the Contractor shall provide the name and qualifications of their selected member to each other for their concurrence. The Contracting Officer and the Contractor shall provide their approval or rejection of the proposed individuals within 10 Days after receipt of each other's list of nominees. These two individuals shall be the first two members of the DRB.
- (2) The third member of the DRB shall be an impartial and qualified chairperson who shall be selected and mutually agreed upon by the first two members within 15 Days after the first two members' appointments are finalized. If the two designated DRB members cannot agree on a chairperson within the 15-Day period, the chairperson shall be selected within 10 Days thereafter by mutual agreement of the Contracting Officer and the Contractor.
- (3) The Contracting Officer and the Contractor shall negotiate with each of the three members of the DRB on the terms and conditions of salary and reimbursable costs for travel, conference facilities, clerical services, mailings, and copying. All costs are to be paid from the Contract allowance set forth in Section 00434, BID SCHEDULE. If the agreed cost exceeds the allowance specified in Section 00434, BID SCHEDULE, the Authority will pay for 100 percent of the cost over that amount.
 - (a) Fees for each member of the DRB shall be commercially reasonable and shall be no greater than the fees charged to the DRB member's most favored customer for similar work. Except under extraordinary circumstances, the hourly fee (excluding travel, per diem, and reimbursable items) shall not be greater than \$300 for each DRB member. For hours in excess of 8 hours per Day, the fee shall be a maximum of 50 percent of the agreed hourly fee. Billing procedures and the fees for travel, per diem, and reimbursable items shall be prudent and consistent with practices given most favored customers.
- (4) Each voting DRB member shall be appointed for the life of the Contract. Forty-five Days prior to the yearly anniversary of the appointment of the

chairperson, the Contracting Officer and the Contractor shall review the performance of the DRB, individually and as a group. Either the Contracting Officer or the Contractor may elect to replace any voting member of the DRB, except that in the case of the chairperson, both the Contracting Officer and the Contractor must agree on replacement. Action to appoint a replacement must start immediately and follow the same procedure as for initial appointment, except that the appointment must be made prior to the yearly anniversary date of the appointment of the chairperson.

- (5) If an election by either party to replace a member is not made in a timely manner, the DRB shall continue for another 12-month period before any replacement is made. If a member of the DRB cannot continue or voluntarily seeks to leave the DRB, the new member shall be appointed in the same manner in which the original appointment had been made.
- (6) Any DRB member to be replaced shall, in conjunction with the remaining DRB members, complete consideration of any dispute pending before the DRB at the time the decision to replace is made. The DRB shall make appropriate rules to handle such disputes during the transition period. In the case of an incapacitated member, or of a member who voluntarily leaves the DRB, all disputes will be put in abeyance until the replacement DRB member has been appointed.

c. Operation of Board

- (1) The DRB shall formulate its own rules of operation, which shall be provided in writing to the Contracting Officer Representative and the Contractor. The entire process may be kept flexible, and any portion of the process may be changed to adapt to individual circumstances presented by a particular dispute. The DRB may initiate on its own or in consultation with the Contracting Officer Representative and the Contractor new rules or modifications to existing rules, whenever the DRB deems it appropriate.
- (2) The DRB members shall keep abreast of construction developments and the progress of the Work. The Contracting Officer Representative and the Contractor shall copy the DRB on periodic progress reports that have been jointly signed by the Contracting Officer Representative and the Contractor or special written progress reports no less often than once a month.
- (3) The DRB shall visit the job-site at least once each quarter and at such other times as significant construction events dictate. The frequency and scheduling of site visits shall be as agreed to among the Contracting Officer Representative, the Contractor, and the DRB. At regularly scheduled site visits, the DRB shall review all active segments of the

Work in the company of the Contracting Officer Representative and the Contractor's representative. The Site visit shall include a meeting attended by representatives of both the Authority and the Contractor.

d. Hearing Procedures

- (1) DRB hearings shall be conducted at the job-site, the Authority offices, or in the Washington D. C. Metropolitan Area.
- (2) The DRB may request the Contracting Officer Representative and the Contractor to produce documents and exchange documents prior to any hearing. The DRB may also request the Contracting Officer Representative and the Contractor to produce documents and witnesses at a hearing. Either party's failure to comply with the DRB's request may be taken into consideration by the DRB in reaching a decision.
- (3) The DRB has the authority to conduct hearings and reach decisions in the manner the DRB deems most appropriate. The DRB has the authority to impose appropriate rules and procedures for the conduct of its hearings. However, such rules and procedures should be informal and, except for the conduct of an orderly hearing, should not exclude any member from the Authority's or Contractor's teams.
- (4) The DRB chairperson shall be responsible for directing the course of the hearings. The DRB shall follow its own rules of presentation and shall not be bound by the judicial rules of evidence. Documents and testimony concerning the dispute shall be presented in the order, manner, and degree of detail the DRB deems most efficient and probative. Each party shall be allowed to make a brief initial presentation and to rebut any factual assertion by another party until the DRB determines that all aspects of the dispute have been covered adequately. The DRB may limit the presentation of any documents or testimony the DRB deems not relevant or redundant. In rare circumstances, the DRB chairperson may require that the testimony of certain or all individuals be given under oath. The DRB chairperson shall administer the oath.

e. Findings and Recommendations

- (1) The DRB shall meet in private at the conclusion of the dispute hearing. All deliberations by the DRB shall be kept confidential except for the findings and recommendations. The DRB shall make a concerted effort to reach a unanimous decision. The DRB shall base its findings and recommendations on the Contract provisions and documents, law, statutes, and regulations deemed by the DRB to be applicable, considering all facts and circumstances of the dispute. The DRB's

findings and recommendations shall be set forth in the following format:

DISPUTES REVIEW BOARD FINDINGS AND RECOMMENDATIONS

I. INTRODUCTION

This Article shall contain the following information:

- Name, Number, and Notice-to-Proceed Date of Contract
- Dispute Title and Specific Number
- Dispute Hearing Conclusion Date and Location
- Attachment Number(s) or Exhibits, if any
- General Scope of the Contract
- General Contract Background information, as appropriate to facilitate the parties' understanding

II. STATEMENT OF DISPUTE

This Article shall include a description of the dispute(s) presented by claimant and counter claimant. It should set forth each element of the relief requested (e.g., adjustment to Contract time and price) and the basis of each claim and difference advanced by the parties. In general, this Article should be a brief summation of the dispute and the basis for bringing forward the dispute and the basis on which the initial claim was denied.

III. FINDINGS AND ANALYSIS

This Article shall include the DRB's findings on (a) each element of the entitlement constituting an adjustment in Contract Price, (b) each element of time constituting an adjustment in Contract Performance Time, and (c) each element of any other relief requested by the parties. This Article shall provide the analysis of and justification for the following Article IV, RECOMMENDATIONS, and shall include references to all contractual, statutory, or other applicable authority supporting the DRB's findings. This Article shall also address the DRB's conclusion as to the relative merits of each party's position. Nothing in the foregoing shall be construed as the DRB being expected to produce a legal brief or detailed estimate of cost and time. However, this Article shall be detailed enough to provide both parties with sufficient information to act on the DRB's recommendation(s) contained in the following Article IV.

IV. RECOMMENDATION(S)

This Article shall contain the DRB's specific recommendation(s) for resolution of the dispute. The recommendation(s) shall be

consistent with the findings and analysis in Article III, FINDINGS AND ANALYSIS.

V. DISSENTING OPINION

This Article shall contain dissent to the findings and recommendations, in whole or in part. The dissenter shall be identified. Dissents shall explain the dissenting member's reasons for disagreeing with the findings and recommendations, in whole or in part, made by the majority of the DRB.

- (2) Within 60 Days after the close of the hearing, the DRB shall issue draft findings and recommendations to the Authority and the Contractor. Within 14 Days after receipt of the draft findings and recommendations, each party shall independently notify the DRB in writing of calculations or other errors or omissions in the draft. Within 14 Days after receipt of the parties' responses to the draft, the DRB shall forward its final findings and recommendations to the Authority and the Contractor simultaneously.

f. Administrative Closing

- (1) Either party may reject the recommendation(s) of the DRB issued pursuant to Paragraph C.1.e herein all or in part in the resolution of a dispute or disputes. If the Contractor rejects the DRB recommendation, the Contractor shall request a final decision of the Contracting Officer pursuant to Section 00730, DISPUTE RESOLUTION. The request for a final decision shall be accompanied by a full explanation as to basis for the rejection of the DRB recommendation(s). In the event of a rejection by the Authority, the Contracting Officer will support the basis of the rejection by findings of fact, which will provide a full explanation for the basis of rejection, subject only to appeal as provided by Section 00730, DISPUTE RESOLUTION.

00833 AUTHORITY-FURNISHED PROPERTY

Modify Section 00733, AUTHORITY-FURNISHED PROPERTY, to delete Paragraphs A through D and substitute the following Paragraph:

- A. The Authority will not furnish property, real or otherwise, through the terms of this Contract. The Contractor is required to purchase or lease any property needed for, but not limited to, laydown, storage, or employee parking in its obligations to comply with the Project requirements.

00841 CONSIDERATION AND BASIS OF PAYMENT

Modify Section 00741, CONSIDERATION AND BASIS OF PAYMENT, in its entirety, and substitute the following:

- A. In consideration of its undertaking under this Contract, the Contractor will be paid the sums set forth in this Contract, which shall constitute complete payment for all work and services required to be performed under this Contract and for all expenditures, which may be made and expenses incurred. The basis of payment will be the Contract Price, as shown on Section 00510, CONSTRUCTION CONTRACT FORM, and which shall constitute complete compensation for performance of all work required by the Contract.
- B. Standby cost for delayed or cancelled Site access: In the event the Contractor is delayed in the performance of the Work due to Authority delayed or cancelled Site access, the following basis of payment shall apply:
 1. The "Hours of Work" is the period during which the Contractor has use of the work area. The "Hours of Work" will exclude the periods required by the Authority to safely secure the work area before the start of the "Hours of Work" and to restore the work area to an operational state after completion of the "Hours of Work".
 2. Delay will be measured relative to "Hours of Work" only. The "Hours of Work" shall be determined based upon weekly coordination between the Contracting Officer's Representative (COR) and the Contractor as defined in Section 01141, ACCESS TO SITE. If the Authority delays the "Access to Site Time", but is also able to delay the "Off Site Time", as defined in Table 01141-01 to Section 01141 ACCESS TO SITE, and the Contractor is able to work for a number of hour's equivalent to the Hours of Work, this will not constitute a delay. If the Contractor is not given the access for a number of hour's equivalent to the Hours of Work, only the differential between the hours the Contractor was given the access and the Hours of Work will constitute a Delay.
 3. Delays caused by actions of the Authority may occur at the start of the "Hours of Work", during the "Hours of Work", or at the end of the "Hours of Work."
 - a. A delay at the start of the "Hours of Work" occurs when the Authority does not grant access to the work area by the scheduled start time. A delay at the start of the "Hours of Work" will be measured from the scheduled start of the "Hours of Work" until the time the Contractor is granted access to the work area.
 - b. A delay during the "Hours of Work" occurs when the Authority requests the Contractor to vacate the work area and the Contractor is later allowed to return to the work area. A delay during the "Hours of Work" will begin when the Contractor is directed to stop work to vacate the work area and will end when the Contractor returns to the work area and resumes work.
 - c. A delay at the end of the "Hours of Work" occurs when the Authority requests the Contractor to vacate the work area early. A delay at the end of the "Hours of Work"

will be measured from the time the Contractor is directed to vacate the work area until the scheduled end of the "Hours of Work".

4. Contractor will be compensated for the direct labor costs, as standby cost, incurred for the aggregate of delays that exceed 30 minutes relative to the "Hours of Work" specified in Table 00841-01. For payment purposes, once delays exceed 30 minutes, delays will be rounded to the nearest 30 minutes provided the Contractor remains mobilized until granted access. For example, if the delay is 45 minutes, the delay will be rounded to 30 minutes, if the delay is 75 minutes, the delay will be rounded to 60 minutes etc.
5. When access to the Site is cancelled by the Contracting Officer Representative with less notice than specified in Table 00841-02 , the Authority will pay the standby cost shown in that table. However, if Contractor is able to reassign the work crew to other work, regardless of the time of the notice given by the Contracting Officer Representative, no payment will be made. If the Authority did not grant any Access during the scheduled Hours of Work stated in Table 01141-01, Section 01141 ACCESS TO SITE due to Authority caused delay, it shall be interpreted as Authority-caused cancellation with less than 5 hour notice for Non-Revenue Weekday Access and Outside of Roadway Access; and the Contractor shall be compensated in accordance with Table 00841-02.
6. No payment will be made in those cases where:
 - a. Authority caused delay is less than 30 minutes
 - b. A delay at the start of the "Hours of Work" occurs and the Authority then grants Access to the Site. If the Contractor elects to cancel Work or proceeds working and then elects to cease working and leaves the Site prior to the scheduled end of the "Hours of Work", no payment for that remaining time will be made to the Contractor.
 - c. Authority provides notice of cancellation to the Contractor by the number of hours equal to or greater than the number of hours specified in Table 00841-02.
7. Prior to the completion of each shift, the Contractor and the Contracting Officer Representative or designee shall sign a Period of Delay form, which shall document the work start and completion times, the duration of the delay, the reason for the delay, the reason for the Contractor leaving the Site prior to the scheduled end of the "Hours of Work" period, and the names of the crew members present, including foremen, but excluding salaried supervision. The Contractor shall not be entitled to compensation for equipment, overhead, profit or extended overhead costs under this Section; however, this Section does not prohibit the Contractor from seeking an equitable adjustment for equipment costs under other sections of the Contract and access delays may provide a basis to grant a non-compensable extension to the Period of Performance. Certified payrolls shall establish the hourly rates of the crewmembers. All requests for payment for delay costs shall be submitted to the Contracting Officer Representative with the next progress payment or within 30 Days, whichever is longer. The Contractor waives

any right to delay costs where the delays are not documented prior to the completion of the shift and the request for payment is not submitted to the Contracting Officer Representative with the next progress payment or within 30 Days, whichever is longer.

8. If the Contractor is not ready to start work at the start of the “Hours of Work” or does not return the work area to the Authority on time at the end of the “Hours of Work,” the Contractor shall compensate the Authority for the Authority staff and other Authority direct costs for supporting the non-revenue or Revenue Service Adjustment event.

TABLE 00841-01: BASIS OF PAYMENT FOR AUTHORITY CAUSED DELAY
AUTHORITY CAUSED DELAY

	Type 1: Non-Revenue – Weekly Access Track Rights Required	Type 2: Non-Revenue – Weekday Access Track Right Not Required	Type 3: Non-Revenue – Weekday Access Track Rights Not Required and within Barricades	Type 4: Weekday Access Track Rights Not Required within Barricades and Non-Invasive
Section 01141 Hours of Work	2 Hours	4 Hours	6 Hours	7 Hours
Delayed Hours	Equal to or more than 30 Minutes	Equal to or more than 30 Minutes	Equal to or more than 30 Minutes	Equal to or more than 2 Hours
Standby Cost: Compensation for Direct Labor	Actual time lost rounded to the nearest 30 minutes	Actual time lost rounded to the nearest 30 minutes	Actual time lost rounded to the nearest 30 minutes	Actual time lost rounded to the nearest 30 minutes
Make-up Access Provided by the Authority	1 Non-Revenue Weekday	No	No	NO
Extended Period of Performance	Yes, if justified by Time Impact Analysis	No	No	NO
Delayed Hours	Less than 30 Minutes	Less than 30 Minutes	Less than 30 Minutes	Less than 2 Hours
Standby Cost: Compensation for Direct Labor	No	No	No	No
Make-up Access Provided by the Authority	No	No	No	No
Extended Period of Performance	No	No	No	No

TABLE 00841-02: BASIS OF PAYMENT FOR AUTHORITY CAUSED CANCELLATION
AUTHORITY CANCELLATION

	Type 1: Non-Revenue – Weekday Access Track Rights Required	Type 2: Non-Revenue – Weekday Access Track Rights Not Required	Type 3: Non-Revenue – Weekday Access Track Rights not Required and within Barricades	Type 4: Weekday Access Track Rights Not Required within Barricades and Non-Invasive
Make-up Access Provided by the Authority	One Non-Revenue Weekday	No	No	No
Notice by Authority before the Start of “Hours of Work”	Less than 5 Hours	Less than 5 Hours	Less than 5 Hours	Less than 5 Hours
Standby Cost: Compensation for Direct Labor	2 Hours	4 Hours	6 Hours	7 Hours
Extended Period of Performance	Yes, if justified by Time Impact Analysis	No	No	No
Notice by Authority before the Start of “Hours of Work”	Equal to 5 Hours or More	Equal to 5 Hours or More	Equal to 5 Hours or More	Equal to 5 Hours or More
Standby Cost: Compensation for Direct Labor	No	No	No	No
Extended Period of Performance	Yes, if justified by Time Impact Analysis	No	No	No

TABLE 00841-03: CONTRACTOR REQUEST TO CANCEL ACCESS
CONTRACTOR REQUEST FOR CANCEL ACCESS

	Type 1: Non-Revenue – Weekday Access Track Rights Required	Type 2: Non-Revenue – Weekday Access Track Rights Not Required	Type 3: Non-Revenue – Weekday Access Track Rights not Required and within Barricades	Type 4: Weekday Access Track Rights Not Required within Barricades and Non-Invasive
Contractor Notice given to Authority before Start of “Hours of Work”	Equal to or less than 5 Days	Equal to or less than 5 Days	Equal to or less than 5 Days	Equal to or less than 5 Days
	Scheduled access event will be lost to the Contractor	Scheduled access event will be lost to the Contractor	Scheduled access event will be lost to the Contractor	Scheduled access event will be lost to the Contractor
Contractor Notice given to the Authority before Start of “Hour of Work”	More than 5 Days	More than 5 Days	More than 5 Days	More than 5 Days
	Access event may be rescheduled by the Authority. Platform Access is Not to exceed 170 cds duration.	Access event may be rescheduled by the Authority. Platform Access is Not to exceed 170 cds duration.	Access event may be rescheduled by the Authority. Platform Access is Not to exceed 170 cds duration.	Access event may be rescheduled by the Authority. Platform Access is Not to exceed 170 cds duration.

00844 METHOD OF PAYMENT

Modify Section 00744, METHOD OF PAYMENT, to delete Paragraph A and substitute the following Paragraph:

- A. The Authority will make progress payments monthly as the Work proceeds as approved by the Contracting Officer Representative for work and by estimates reviewed and approved by the Contracting Officer Representative for construction-related work. At least 5 Days before submission of any Application for Payment, a Preliminary Monthly Progress and Quality Status Report Review meeting will be held to review for acceptability of the schedules and the Quality System. The Contractor shall have an additional 5 Days to make corrections and adjustments and to complete and resubmit the schedules. A Formal Progress and Quality Status Report Review meeting will be held to approve the schedules. No progress payment will be made to Contractor until the schedules are provided and accepted by the Contracting Officer Representative, whose acceptance will not be unreasonably withheld. The progress schedule shall be acceptable to Authority as providing an orderly progression of the Work to completion within any specified Milestones and the Period of Performance, but acceptance of the progress schedule shall neither impose on Authority responsibility for the sequencing, scheduling, or work progress nor interfere with or relieve the Contractor from Contractor's full responsibility for the Work. The format and structure of the progress schedule shall be as set forth in Section 01322, CONTRACT PROGRESS REPORTING. The Authority's acceptance shall not be deemed to confirm that the schedule is a reasonable plan for performing the Work.

00865 DISADVANTAGED BUSINESS ENTERPRISE

Modify Section 00765, DISADVANTAGED BUSINESS ENTERPRISE, to delete Paragraph B and substitute the following:

The goal of DBE participation established for this Contract is 10% percent of the Contract Price.

00867 DAVIS BACON AND COPELAND ANTI-KICKBACK ACTS – LABOR PROVISIONS

Modify Section 00767, DAVIS BACON AND COPELAND ANIT-KICKBACK ACTS – LABOR PROVISIONS, by adding Appendix D, WAGE DETERMINATION BY THE SECRETARY OF LABOR at the end of this Section.

00875 AUTHORITY RIGHTS IN TECHNICAL DATA

Modify Section 00775, AUTHORITY RIGHTS IN DATA to delete Paragraph A and substitute the following Paragraph:

- A. All, drawings, specifications, Samples, processes (including Computer Software), laboratory testing analyses and reports, notes, As-Built Drawings produced during and after completion of construction and other work produced in the performance of this Contract, or in the contemplation or implementation thereof shall be and remain the sole property of the Authority and may be used on any other work without additional cost to the Authority. Any re-use of shall be at the Authority's sole risk and with respect thereto, the Contractor agrees

not to assert any rights or to establish any claim under the design patent or copyright laws and not to publish or reproduce such matter in whole or in part or in any manner or form, or authorize others so to do, without the written consent of the Authority until such time as the Authority may have released such matter to the public. Further, with respect to any design or process, which the Authority desires to protect by applying for and prosecuting a design patent application, or otherwise, the Contractor agrees to furnish the Authority such duly executed instruments and other papers (prepared by the Authority) as are deemed necessary to vest in the Authority the rights granted it pursuant to this Section. The Contractor, for a period of 3 years after completion of the Project or task, agrees to furnish and to provide access to the originals or copies of all such materials on the request of the Authority.

00877 INDEMNIFICATION AND INSURANCE REQUIREMENTS

Modify Section 00777, INDEMNIFICATION AND INSURANCE REQUIREMENTS, to delete in its entirety and substitute the following:

Indemnification

1. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and the Authority, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this contract, unless the loss or damage is due to the sole negligence of the Authority. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.
2. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys' fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the job site; provided, however, that the foregoing indemnity does not apply to loss or damage due to preexisting conditions, whether known or unknown.
3. If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.
4. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the

failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

Minimum Insurance Requirements

The following outlines the minimum insurance coverages and limits of insurance for those coverages that Contractor will be required to purchase and maintain. Contractor shall procure, at its sole cost and expense, the minimum required insurance as follows:

General Insurance Requirements

- 1) Contractor is required to maintain the insurance coverage(s) outlined in this Section for a period of time commencing the sooner of the execution of this contract, or the start of Work, and continuing through the completion of all work including any and all punch list and warranty work, without interruption.
- 2) The insurance coverage and limits of insurance outlined herein are minimum coverage and limits. Contractor is encouraged, at its sole cost and expense, to purchase any additional insurance coverages and or limits of insurance that Contractor deems prudent and necessary to manage risk in the completion of this contract.
- 3) Upon written request from WMATA, contractor shall provide copies of any and all policy(s) required by these Minimum Insurance Requirements, including all endorsement(s), within 5 business days of such request.
- 4) Receipt, review and communications regarding Certificates of Insurance (COI), Insurance Policy(s), endorsements or other materials utilized to document compliance with these Minimum Insurance Requirements does not constitute acceptance by WMATA.
- 5) Insurance Policies must be written on admitted paper, (unless otherwise indicated herein) with insurance companies having an A. M. Best rating of at least A- VII.
- 6) Unless otherwise noted, "Claims Made" insurance policies are not acceptable.
- 7) Any insurance policy utilizing a Self-Insured Retention (SIR) requires written approval from WMATA.
- 8) Contractor is required to incorporate these Minimum Insurance Requirements into contract requirements of all Sub-contractors of every tier. Contractor, at its sole peril, may amend the insurance for its Sub-contractors, but doing so does not relieve Contractor from its respective liability to WMATA.
- 9) Compliance with these Minimum Insurance Requirements does not relieve Contractor from its respective liability to WMATA, even if that liability exceeds the minimum insurance requirements.

Workers’ Compensation and Employer’s Liability

Required Minimum Limits of Coverage:

Workers’ Compensation	Statutory	
Employers’ Liability	\$1,000,000	Each Accident
	\$1,000,000	Disease Policy Limit
	\$1,000,000	Disease Each Employee

Required Minimum Coverage(s):

- 1) Workers’ Compensation Statutory Coverage must be provided on an “All States” basis.
- 2) Contractor and Sub-contractors of any tier performing work within 500 feet of navigable water must have their Workers’ Compensation Policy endorsed to provide coverage for both Jones Act Liability and Longshore and Harbor Workers’ Compensation Act Liability.

Commercial General Liability

Required Minimum Project – Specific Limits of Coverage:

\$10,000,000	Each Occurrence Limit
\$20,000,000	General Aggregate Limit
\$10,000,000	Products and Completed Operations Limit

Required Minimum Coverage(s):

- 1) Commercial General Liability (CGL) coverage form shall be ISO Occurrence Form CG0001 (12/04) or its equivalent. Equivalency determination shall be made in WMATA’s sole and unreviewable discretion.
- 2) Required minimum limits of coverage may be achieved through a combination of the aforementioned CGL coverage form and umbrella/excess liability coverage form(s), provided that the umbrella/excess liability coverage form(s) provide the same or broader coverage than the prescribed CGL coverage form.
- 3) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the “Additional Insured” Section below. Commercial General Liability and umbrella/excess liability forms must provide defense coverage for additional insureds. The Additional Insured Endorsement shall include Products and Completed Operations Coverage with no limitation on when claims can be made. The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.’s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85 as determined by WMATA.
- 4) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the “Waiver of Subrogation” Section below.

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- 5) The definition of "Insured Contract" shall be modified to provide coverage for contractual liability for contracts for construction or demolition operations that are within 50 feet of a railroad, and sidetrack agreements.
 - 6) Defense Costs (Allocated Loss Adjustment Expense) must be included and in excess of the policy limits for all Primary Liability and Umbrella Excess Liability Policies.
 - 7) Policy shall be endorsed with ISO endorsement CG 25 03 03 97; "Designated Construction Project(s) General Aggregate Limit", and designate "Any and all construction projects" as the Designated Construction project.
 - 8) Policy shall be endorsed with ISO endorsement CG 25 04 03 97; "Designated Location General Aggregate Limit", and designate "Any and all locations" as the Designated Location.

Railroad Protective Liability Insurance (RRP)

For work within 50 feet of WMATA railroad tracks or work within WMATA rail stations, Railroad Protective Liability Insurance is required with the following minimum limits of coverage:

\$5,000,000	Each Occurrence Limit
\$10,000,000	Aggregate Limit

Required Minimum Coverage(s):

- 1) Railroad Protective Liability (RRP) policy on a policy form that is acceptable to WMATA, issued by an insurance company that is acceptable to WMATA.
- 2) WMATA shall be the first Named Insured.
- 3) Cost of RRP shall be the sole responsibility of Contractor.
- 4) The "Wet Ink" original RRP policy shall be sent to WMATA at following address:

Washington Metropolitan Area Transit Authority
Office of Insurance, Room 8F
600 Fifth Street, NW
Washington, DC 20001

WMATA Blanket RRP Program Option

WMATA may offer to waive the requirement for the Contractor to procure RRP if 1) the work qualifies for coverage under WMATA's blanket RRP program, and 2) the Contractor prepays the RRP waiver fee which shall be determined by the rate schedule promulgated by the insurer in effect as of the effective date of this Contract. Contractor shall be advised of, and pay the applicable waiver fee, or procure a standalone RRP policy on WMATA's behalf if Contractor decides against the WMATA Blanket RRP Program option.

Business Auto Liability

Required Minimum Limits of Coverage:

\$2,000,000	Combined Single Limit
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Required Minimum Coverage(s):

- 1) Business Auto Liability shall be written on ISO Business Auto Coverage Form CA 00 01 03 06, or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- 2) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below.
- 3) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the "Waiver of Subrogation" Section below.
- 4) Business Auto Liability minimum Combined Single Limit requirements may be obtained through the combination of a Primary Business Auto Liability policy and an umbrella/excess liability policy provided that the umbrella/excess liability policy complies with items 1 through 3 above.

Professional Liability Insurance. Contractor, any Sub-contractor of any tier or any supplier providing design services or the services of a professional engineer, including, but not limited to stamping, sealing, or certifying blueprints or other related documents are required to maintain Professional Liability Insurance as follows:

- 1) Minimum Limits of Coverage of \$2,000,000 each claim.
- 2) Actual coverage or tail coverage must be purchased and maintained for a period of time equal to the statute of repose.
- 3) Coverage can be written on an "Occurrence" or "Claims Made" Basis.

Coverage can be written on 'Non-Admitted" paper.

Additional Insured(s)

Contractor and Sub-contractors of every tier are required to add WMATA and WMATA Board of Directors as additional insured(s) on all insurance policies purchased by Contractor and Sub-contractors of every tier, including excess liability policy(s), with the exception of Workers' Compensation and Professional Liability.

- 1) Coverage provided to any Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured, including coverage afforded to the WMATA as an additional insured by Sub-contractors, and from other third parties.
- 2) Coverage provided to any Additional Insured shall be for claims arising out of both ongoing operations and products and completed operations hazard.

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- 3) Coverage available to any Additional Insured under the products and completed operations hazard can only be limited to the applicable statute of repose in the jurisdiction(s) where the contract scope of work takes place.
 - 4) The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85 as determined by WMATA.

Waiver of Subrogation

Contractor and Sub-contractors of every tier are required to have all insurance policies required under these Minimum Insurance Requirements endorsed to waive the respective insurance company's rights of recovery against WMATA, and the WMATA Board of Directors.

- 1) Waiver shall be provided on an endorsement that is acceptable to WMATA.

Certificate of Insurance (COI)

Contractor shall provide WMATA an ACORD Certificate of Insurance (COI) and copy of the Additional Insured endorsements as evidence that the insurance requirements of this Section have been satisfied. Certificates of Insurance shall be emailed to COI@WMATA.COM.

The cert holder box should read:

Washington Metropolitan Area Transit Authority
Office of Insurance, Room 8F
600 Fifth Street, NW
Washington, DC 20001

Additionally;

- 1) Proposed material modifications to insurance required under this Section must be received by WMATA at least 30 days prior to the effective date of the proposed modifications to such insurance.
- 2) WMATA's receipt of copies of any COI, policy endorsements or policies does not relieve Contractor of the obligation to remain in compliance with the requirements of this Section at all times. Contractor's failure to comply with these insurance requirements shall constitute a material breach of this Contract.
- 3) Receipt of the COI does not constitute acceptance of the insurance outlined above.

00878 LIQUIDATED DAMAGES

Modify Section 00778, LIQUIDATED DAMAGES, to delete Paragraph A. and substitute the following Paragraph and subparagraphs:

A. The Contractor understands that if it fails to complete portions of or all of the Work as described in Section 00824, PERIOD OF PERFORMANCE AND PROJECT SCHEDULE, the Authority will suffer damages, which have been estimated and are as specified below:

1. No Liquidated Damages will be assessed for interim Milestones 1, 2, and 3.

(1) NTP +365 Days: \$2,250 per Day.

00891 LIVING WAGE

Modify Section 00700, GENERAL CONDITIONS, to add the following Section:

00791 LIVING WAGE

A. This Contract is subject to the Authority's Living Wage Policy and implementing regulations. The Living Wage provision is required in all contracts for services (including construction) awarded in an amount that exceeds \$100,000 in a 12-month period.

1. The Authority Living Wage Rate is \$13.60 per hour, and may be reduced by the Contractor's per-employee cost for health insurance.

2. The Contractor shall:

a. Pay, at a minimum, the Authority Living Wage Rate, effective during the time the work is performed, to all employees who perform work under this contract, except as otherwise provided in paragraph (d) below;

b. Include the Living Wage clause in all Subcontractors that exceed \$15,000 in a 12-month period awarded under this Contract;

c. Maintain payroll records, in accordance with the retention and examination of records requirements in the General Conditions, and shall include a similar provision in affected Subcontracts that requires the Subcontractor to maintain its payroll records for the same length of time; and

d. Submit records with each monthly invoice supporting payment of the Living Wage Rate.

3. The Contractor shall not split or subdivide a contract, pay an employee through a third party, or treat an employee as a Subcontractor or independent contractor to avoid compliance with the Living Wage provisions.

4. Exemptions to the Living Wage provisions include:

a. Contracts and agreements with higher negotiated wage rates;

b. Contracts that are subject to higher wage rates required by federal law or collective bargaining agreements (e.g., Davis Bacon);

- c. Contracts or agreements for regulated utilities;
 - d. Emergency services to prevent or respond to a disaster or imminent threat to public health and safety; and
 - e. Contractors who employ fewer than ten employees
5. The Authority may adjust the Living Wage rate effective in January of each year. The adjustment will reflect the average Living Wage Rate among Metro's Compact Jurisdictions with Living Wage provisions. If after Contract award the Living Wage Rate increases, the Contractor is entitled to an equitable adjustment to the rate in the amount of the increase for employees who are affected by the escalated wage.
6. Failure to comply with the Authority's Living Wage provisions shall result in the Authority's right to exercise available Contract remedies, including Contract termination or debarment from future contracts.

00892 NOTIFICATION OF FEDERAL PARTICIPATION

Modify Section 00700 GENERAL CONDITIONS, to add the following Section:

00792 NOTIFICATION OF FEDERAL PARTICIPATION

- A. This Project is being funded in whole or part with Federal Funds.

Appendix D - Wage Determination of the Secretary of Labor

END OF SECTION

Section 00900

AMENDMENTS AND MODIFICATIONS

Section 00910

AMENDMENTS

Section 00920

CLAIMS

Section 00930

CLARIFICATIONS AND PROPOSALS

Section 00940

MODIFICATIONS