

GENERAL CONDITIONS

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

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SECTION 00 70 00

GENERAL CONDITIONS

ARTICLE 1 DEFINITIONS AND TERMINOLOGY

1.1 *Defined Terms*

- A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.
1. *Addenda* -- Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.
 2. *Allowance* -- A Bid item that may be included on projects. The allowance, or any part thereof, may only be obligated as part of the Contract by DC Water.
 3. *Application for Payment* -- The form acceptable to DC Water which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos* -- Any material that contains more than one percent asbestos.
 5. *As-Built* -- Actual conditions of the Work as-constructed, regardless of whether that Work is identical to the Work shown on the Contract Drawings or whether that Work is different than that which is shown on the Contract Drawings. This includes all additions, deletions, and deviations to the new Work.
 6. *As-Built Drawings* -- A record of the As-Built Work performed by the Contractor that is documented on a set of Contract Drawings. See also Final As-Built Drawings and Partial As-Built Drawings.
 7. *Award* -- The formal acceptance of the Bid by the Contracting Officer, subject to the execution of a satisfactory Contract therefor and such other conditions as may be specified or required by law.
 8. *Beneficial Occupancy* -- The formal acceptance by the jurisdiction having authority to grant permission to occupy and/or utilize a facility or portion of a facility and is documented by the jurisdiction having authority issuing a certificate of Beneficial Occupancy.
 9. *Bid* -- The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 10. *Bidder*--The individual or entity who submits a Bid directly to DC Water, as distinct from a sub-bidder who submits a bid directly to a Bidder.
 11. *Bidding Documents* -- The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
 12. *Bidding Requirements* -- The Sections of the Contract Documents in Division 00 between Section 00 00 00 and Section 00 49 99 including, but not limited to the Advertisement or Invitation to Bid, Instructions to Bidders, bid security, if any, and the Bid form with any supplements.

13. *Bonds* -- Performance Bond and Payment Bond and other instruments of security.
14. *Change Order* -- A document signed by both the Contracting Officer and the Contractor that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times or both, issued on or after the Effective Date of the Contract.
15. *Claim* -- A disputed demand or assertion by the Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
16. *Contract* -- The written Contract between DC Water and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
17. *Contract Documents* -- The Contract Documents shall include the documents set forth in Section 00 50 00 – Contract.
18. *Contract Drawings* -- See Drawings.
19. *Contract Price* -- The moneys payable by DC Water to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Contract (subject to the provisions of Paragraph 10.3 in the case of Unit Price Work).
20. *Contract Times* -- The number of calendar days or the dates stated in the Contract to: (i) achieve Milestones, if any; (ii) Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by DC Water’s written recommendation of final payment.
21. *Contracting Officer* -- The Chief Executive Officer (CEO) and General Manager of DC Water or his or her designated representative, authorized to enter into a contract on behalf of DC Water.
22. *Contractor* -- The individual or entity with whom DC Water has entered into the Contract.
23. *Cost of the Work* -- See Paragraph 10.1A for definition.
24. *DC Water* -- The District of Columbia Water and Sewer Authority with whom Contractor has entered into a Contract and for whom the Work is to be performed.
25. *DC Water’s Consultant* -- An individual or entity having a separate contract with DC Water to furnish services with respect to the Project as an independent professional associate or consultant and who is identified in the Contract Documents.
26. *DC Water’s Safety Representative* -- The person designated as safety representative by DC Water to oversee DC Water’s safety interests on the Project.
27. *Division* -- A standard category of construction specifications that forms the framework of a project specification.
28. *Drawings* -- That part of the Contract Documents prepared or approved by DC Water which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

29. *Effective Date of the Contract* -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
30. *Electronic Transmission* -- Any process of communication that does not directly involve the physical transfer of paper and that is suitable for the retention, retrieval and reproduction of information by the recipient.
31. *Estimated Quantity* -- See Paragraph 10.3A for definition.
32. *Federal Requirements and Contract Provisions* -- those requirements incorporated into the Contract Documents as a result of actual or potential grant funding from the U.S. Environmental Protection Agency.
33. *Field Order* -- A written order issued by DC Water which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
34. *Final As-Built Drawings* -- As-Built Drawings that are certified and submitted to DC Water after all Work is complete and which contain all As-Built Work performed during construction. See also As-Built Drawings.
35. *Final Completion* -- The time when, in the opinion of DC Water, all Work required by the Contract is completed satisfactorily and ready for final payment.
36. *General Requirements* -- Sections of Division 01 of the Specifications.
37. *Good Industry Practice* -- The methods, techniques, standards and practices, which at the time they are to be employed and considering the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good industry practice in the Mid-Atlantic Region of the United States.
38. *Governmental Unit* -- Any national, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the performance of the Work, the Project or the parties.
39. *Hazardous Environmental Condition* -- The presence at the Site of Asbestos, PCBs, Petroleum, Lead Paint, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
40. *Hazardous Waste* -- Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
41. *Laws and Regulations; Laws or Regulations* -- Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
42. *Lead Paint* -- Any paint or surface coating that contains lead.
43. *Liens* -- Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
44. *Lump Sum* -- A single dollar amount for which the Contractor agrees to perform a specific scope of work. A Lump Sum can be used to determine the total price of the entire Work using a single bid item in the Schedule of Prices or to determine a

total price for a specific portion of the Work for which a unit of one (1) is assigned as the quantity to a specific bid item in Unit Price Work.

45. *Milestone* -- A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
46. *Notice to Proceed (NTP)* -- Written documentation from DC Water to the Contractor stating the date on which Work may begin and identifies the beginning of the Contract Times.
47. *Other Project Contractors* -- Those parties defined in Paragraph 8.1A.
48. *Owner* -- The terms Owner and DC Water shall be synonymous.
49. *Partial As-Built Drawings* -- As-Built Drawings that are certified and submitted to DC Water each month and which show all As-Built Work for the period of time for which a request for payment is being submitted. See also As-Built Drawings.
50. *Partial Utilization* -- Use by DC Water of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
51. *Payment Bond* -- The security in the form approved by DC Water and executed by the Contractor and its surety, and paid for by the Contractor, as a guarantee that the Contractor will pay in full all its bills and accounts for materials and labor used in the prosecution and construction of the Work.
52. *PCBs* -- Polychlorinated biphenyls.
53. *Performance Bond* -- The security in the form approved by DC Water and executed by the Contractor and its surety, and paid for by the Contractor, as a guarantee for the benefit of DC Water complete performance of the Contract in accordance with the terms.
54. *Petroleum* -- Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
55. *Progress Schedule* -- The schedule, prepared and submitted by Contractor and approved by DC Water, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
56. *Project* -- The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.
57. *Project Representative* -- The authorized representative of DC Water who may be assigned to the Site or any part thereof.
58. *Radioactive Material* -- Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

59. *Safety Data Sheet* -- The data sheet from the chemical manufacturer, distributor, or importer that provides the hazardous chemical information to the users of the chemical and is compliant with 29 CFR 1910.1200(g).
60. *Samples* -- Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
61. *Schedule of Prices* -- The list of prices that defines the price structure for payment of Work performed on a Project.
62. *Section* -- A portion of the specifications covering one or more segments of the total project. Sections are included in the Contract as needed to meet project requirements and are a portion of a Division. Section may also refer to one or more segments of a regulation, code, or standard.
63. *Site* -- Lands or areas indicated in the Contract Documents as being furnished by DC Water upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by DC Water which are designated for the use of Contractor.
64. *Specifications* -- That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details pertinent thereto (Divisions 00 through 49).
65. *Standard Details* -- Detailed drawings of DC Water standard design applications.
66. *Stop Work Order* -- An order issued by DC Water, the District of Columbia Department of Transportation (DDOT), or other District of Columbia agency to the Contractor requiring the Contractor to stop the portion of the Work identified in the order.
67. *Subcontractor* -- An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
68. *Submittal* -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
69. *Substantial Completion* -- The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of DC Water, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “*substantially complete*” and “*substantially completed*” as applied to all or part of the Work refer to Substantial Completion thereof.
70. *Supplementary Conditions* -- That part of the Contract Documents which amends or supplements these General Conditions.
71. *Supplier* -- A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

72. *Underground Facilities* -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
73. *Unilateral Change Order* -- A document signed by the Contracting Officer that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times or both, issued on or after the Effective Date of the Contract. A Unilateral Change Order, when executed by Contractor, becomes a Change Order.
74. *Unit Price Work* -- Work to be paid for on the basis of unit prices.
75. *Utility* -- Any public or private fixed works for the furnishing or transportation of fluids, gases, electricity, signals, or communications.
76. *Without Exception* -- The term "without exception", when used in the Contract Documents following the name of a Supplier or a proprietary item of equipment or material, shall mean that the sources of the product are limited to the listed Suppliers or products and that no like, equivalent, or "or-equal" item or no substitution will be permitted.
77. *Work* -- The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
78. *Work Change Directive* -- A written statement to Contractor issued on or after the Effective Date of the Contract and signed by DC Water ordering an addition, deletion, or revision in the Work as the result of an emergency, differing or unforeseen site conditions, or any other reason that DC Water may, in its sole discretion, determine.
79. *Written Amendment* -- A written statement modifying the Contract Documents, signed by the Contracting Officer and Contractor on or after the Effective Date of the Contract and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

1.2 Terminology

A. Intent of Certain Terms or Adjectives:

1. Whenever in the Contract Documents the terms "as allowed", "as approved", or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of DC Water as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to DC Water any duty or DC Water to supervise or direct the performance of the Work or any duty or DC

Water to undertake responsibility contrary to the provisions of Paragraph 7.6 or any other provision of the Contract Documents.

B. Day:

1. The word day shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. Defective:

1. The word “defective”, when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any one or more inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by DC Water at Substantial Completion in accordance with Paragraph 13.5 or 13.6).

D. Furnish, Install, Perform, Provide:

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

- E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 PRELIMINARY MATTERS

2.1 *Delivery of Bonds*

- A. When Contractor delivers the executed Contract to DC Water, Contractor shall also deliver to DC Water such Bonds as Contractor may be required to furnish.

2.2 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the date specified in the Notice to Proceed.

2.3 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to compliance with Paragraph 2.4.

2.4 *Before Starting Construction*

- A. Evidence of Insurance: Before any Work at the Site is started, Contractor and DC Water shall each deliver to the other, with copies to each additional insured identified in the Project Insurance Section of the Contract Documents, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and DC Water respectively are required to purchase and maintain in accordance with ARTICLE 5.
- B. Prior to beginning any work at the Site, submit to and obtain DC Water's approval for the following:
 - 1. Safety and Health Plan.
 - 2. Quality Control Plan.
 - 3. ROCIP Enrollment and/or Certificates of Insurance, as applicable.
 - 4. Initial Submittal Register.
 - 5. Preliminary Schedule.
 - 6. Additional documentation listed in Section 00 73 00 – Supplementary Conditions.
- C. At the times identified below, submit and obtain DC Water's approval for the following:
 - 1. Permits that are the Contractors responsibility – Prior to performing work for elements of work requiring a permit.
 - 2. Subcontracting Approval Requests – Prior to the subcontractor responsible for specific elements of the work beginning any work associated with their assigned responsibilities. This does not preclude the Contractor from beginning work that is self-performed.
 - 3. Preconstruction Survey – Prior to beginning work at the Site. When the Site is in multiple locations, or when the Site consists of multiple properties, beginning work at the Site is specific to the individual location or property.

2.5 *Preconstruction Conference*

- A. Within ten (10) days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by Contractor, DC Water, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.5B, procedures for handling submittals, processing Applications for Payment, maintaining required records and other Contract activities.
- B. Schedules: At the Preconstruction Conference, Contractor shall submit to DC Water for review:
 - 1. a schedule prepared in accordance with the Construction Schedule Section;
 - 2. a schedule of cash flow projections for estimated partial payments during the performance of the Work;
 - 3. a preliminary schedule of values for all of the Work not covered under unit price items that includes quantities and prices of items that when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. When required, a cost-loaded CPM schedule may be used in lieu of a schedule of

values. Overhead and profit shall be proportionally distributed over all items in the schedule of values or all cost-loaded activities in the CPM schedules;

4. any other document(s) relevant to developing a working understanding of the scope of the Work requested by the Contracting Officer at least seven days prior to the Preconstruction Conference

2.6 *Initial Acceptance of Schedules*

- A. Unless otherwise provided in the Contract Documents, DC Water will review for approval the schedules submitted in accordance with Paragraph 2.5B and the Construction Schedules Section. No Work at the Site shall start and no progress payment shall be made to Contractor until acceptable schedules are approved by DC Water.

ARTICLE 3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 *Intent*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) ready for continual operation to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be provided whether or not specifically called for at no additional cost to DC Water.
- C. Clarifications and interpretations of the Contract Documents shall be issued by DC Water as provided in ARTICLE 7.
- D. If any provision of this Contract is held by a court or board of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
- E. The titles or headings of the paragraphs and subparagraphs in the Contract Documents are intended for convenience of reference and shall not be considered as having a bearing on their interpretation.

3.2 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations:
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of DC Water, DC Water's Consultants, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to DC Water, or any of DC Water's Consultants, agents, or employees any duty or DC Water to supervise or direct the performance of the Work or any duty or DC Water to

undertake responsibility inconsistent with the provisions of the Contract Documents.

3.3 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies:

1. Contractor's Review of Contract Documents before Starting Work: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to DC Water any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from DC Water before proceeding with any Work affected thereby.
2. Contractor's Review of Contract Documents during Performance of Work: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any pertinent Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to DC Water in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.18) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.4.
3. Contractor shall not be liable to DC Water for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, code, or instruction of any Subcontractor or Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations pertinent to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.4 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) DC Water's approval of a Submittal or Sample (subject to the notification provisions of Section 01 33 00 – Submittals); or (iii) DC Water's written interpretation or clarification.

3.5 *Reuse of Documents*

- A. Contractor and any Subcontractor, Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with Contractor, any Subcontractor or Supplier: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of DC Water or DC Water's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of DC Water and specific written verification or adaptation by DC Water. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.6 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by DC Water to Contractor, or by Contractor to DC Water, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

3.7 *Electronic Signatures*

- A. Signed versions of this Contract, the Contract Documents, any Addenda, attachments, exhibits, amendments, Change Orders, submittals and all other related documents signed in connection with this Contract that a party has transmitted to the other by facsimile, email, or other electronic medium shall be intended as and constitute an original and deemed to contain a valid signature of the party for all purposes acknowledging, consenting to, authorizing and approving the terms of the document, this Contract or any subject matter applicable thereto. Each party intends to be bound by its electronically transmitted signature and each is aware that the other will rely on the electronically transmitted signature, and each acknowledges such reliance and waives any defenses to the enforcement of the documents effecting the transaction contemplated by this Contract based on a faxed or electronically transmitted signature.

ARTICLE 4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.1 *Availability of Lands*

- A. DC Water shall furnish the Site. DC Water shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with

which Contractor must comply in performing the Work. DC Water will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and DC Water are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in DC Water's furnishing the Site, Contractor may make a Claim therefore as provided in ARTICLE 15.

- B. The Contractor shall be responsible for having taken steps reasonably necessary to investigate and ascertain the nature and location of the Work, and the general and local conditions which can affect the Work or the cost thereof, including, but not limited to, those conditions bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the Site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to, and during, the prosecution of the Work. The Contractor 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 DC Water, as well as from information presented by the Drawings and Specifications of the Contract. Any failure by the Contractor to do so will not relieve Contractor from responsibility for: (i) estimating properly the difficulty or cost of successfully performing the Work; and (ii) successfully performing the Work without additional expense to DC Water.
- C. DC Water assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by DC Water. DC Water is not responsible for any representation or purported agreement concerning conditions or contract requirements made by any employee, agent or representative of DC Water prior to the execution of the Contract, unless such representation or understanding is expressly stated in the Contract.
- D. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* Section 00 30 00 - Available Project Information includes:
 - 1. Reports of explorations and tests of subsurface conditions at or contiguous to the Site that DC Water has used in preparing the Contract Documents; and
 - 2. Drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, (except Underground Facilities) DC Water has used in preparing the Contract Documents.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the technical data contained in the reports and drawings identified in Paragraph A above, but such reports and drawings are not Contract Documents. Notwithstanding the above, Contractor may not rely upon or make any Claim against DC Water or any of DC Water's Consultants with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any such technical data or any such other data, interpretations, opinions, or information.

4.3 *Differing Subsurface or Physical Conditions*

- A. *Notice:* If Contractor believes that any subsurface or latent physical condition at or contiguous to the Site that is uncovered or revealed either:
 1. is of such a nature as to establish that any technical data on which Contractor is entitled to rely as provided in Paragraph 4.2 is materially inaccurate; or
 2. is of such a nature as to require a change in the Contract Documents; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall, promptly (but in no event later than seven days) after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.18), notify DC Water or designated representative in writing about such conditions. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so. Then Contractor shall, promptly (but in no event later than seven days) after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.18), notify DC Water or designated representative in writing about such conditions. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.
- B. *DC Water's Review:* After receipt of written notice as required by Paragraph 4.3A, DC Water will promptly investigate the pertinent conditions, determine the necessity of DC Water's obtaining additional exploration or tests with respect thereto, and advise Contractor in writing of DC Water's findings and conclusions.
- C. *Possible Price and Times Adjustments:*
 1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost or time required to perform any part of the Work, whether or not changed as a result of such conditions; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.3A; and
 - b. with respect to Work that is paid for as Unit Price Work, any adjustment in Contract Price will be subject to the provisions of Paragraph 10.3.
 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to DC Water with respect to the Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

- b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice within the time and as required by Paragraph 4.3A; or
 - d. Contractor received final payment under the Contract.
3. If DC Water and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in ARTICLE 15. However, DC Water, and DC Water's Consultants shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all claim, court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.4 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to DC Water by the owners of such Underground Facilities, including DC Water, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- 1. DC Water shall not be responsible for the accuracy or completeness of any such information or data; and
- 2. the cost of all of the following shall be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data,
 - b. locating all Underground Facilities shown or indicated in the Contract Documents,
 - c. coordination of the Work with the owners of such Underground Facilities, including DC Water, during construction, and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- 3. In accordance with Paragraph 4.4A.2, it is understood and agreed that the Contractor has considered in its Bid all of the permanent and temporary Underground Facilities in their present or relocated positions, and that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained by Contractor due to any interference from said Underground Facilities, the operation of moving the Underground Facilities, the making of new connections thereto if required by the Contract Documents, or by any other requirements of the owner(s) of the Underground Facilities.

B. *Not Shown or Indicated:*

- 1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions

affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.18), identify the owner of such Underground Facility and give written notice to that owner and to DC Water. DC Water will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If DC Water concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated in the Contract Documents and that Contractor did not know of, and could not reasonably have been expected to be aware of, or to have anticipated. Contractor's right to an equitable adjustment is conditioned upon Contractor having furnished written notice as required by Paragraph 4.4B.1 above. If DC Water and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, the Contractor may make a Claim therefor as provided in ARTICLE 15.

4.5 *Reference Points*

- A. DC Water shall provide engineering surveys to establish reference points for construction which in DC Water's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of DC Water. Contractor shall report to DC Water whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.6 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to Hazardous Environmental Conditions identified at the Site, if any, that have been utilized by DC Water in the preparation of the Contract Documents.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the technical data contained in the reports and drawings identified in Paragraph A above, but such reports and drawings are not Contract Documents. Notwithstanding the above, Contractor may not rely upon or make any Claim against DC Water or any of DC Water's Consultants with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any such technical data or any such other data, interpretations, opinions or information.
- C. Where Hazardous Environmental Conditions are shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, Contractor shall take such action as is necessary, in accordance with applicable Laws and Regulations, to plan for and to remediate and render harmless all such Hazardous Environmental Conditions. Remediation plans for such known Hazardous Environmental Conditions shall be provided to DC Water for approval prior to undertaking the remediation.
- D. If Contractor encounters any unknown Hazardous Environmental Conditions at the Site, it shall stop Work immediately in the affected part of the Work to the extent required to avoid any such safety or health hazard until it has taken such action as is necessary, in accordance with pertinent Laws and Regulations, to protect the interests of any affected party. Contractor shall, immediately upon encountering any Hazardous Environmental Conditions at the Site, notify DC Water and, if required by Laws and Regulations, all Governmental Units with jurisdiction over the Project or Site.
- E. Contractor shall take all necessary measures required to ensure that Hazardous Environmental Conditions are remediated or rendered harmless in accordance with pertinent Laws and Regulations. Contractor shall, prior to proceeding with any such work: (a) obtain all environmental site assessments of the affected property and submit copies of such assessments to DC Water for its approval; (b) develop remediation plans for the Hazardous Environmental Conditions, subject to DC Water's approval; and (c) obtain all pertinent permits to implement such plans. During the period of any investigation and remediation efforts, Contractor shall take all necessary measures to isolate and contain such Hazardous Environmental Conditions from the unaffected parts of the Work, and shall continue the Work to the maximum extent possible on unaffected parts of the Work.
- F. Except for those Hazardous Environmental Conditions set forth in Paragraph G below, Contractor will be entitled to submit a request for an adjustment to the Contract Price and/or Contract Time(s) to the extent Contractor's cost and/or time of performance have been adversely impacted by the presence, removal or remediation of unknown Hazardous Environmental Conditions. To the fullest extent permitted by Laws and Regulations, DC Water shall indemnify and hold harmless Contractor from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from such unknown Hazardous Environmental Conditions. Notwithstanding anything to the contrary in the Contract Documents, DC Water shall not be obligated to indemnify or hold harmless Contractor from and against the consequences of the negligence, recklessness or willful misconduct of Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- G. Notwithstanding anything to the contrary in the Contract Documents, Contractor shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to: (a) any Hazardous Environmental Conditions present at, on, in or under, or migrating and/or emanating to or from the Site, that were generated by or brought or caused to be brought on the Site by any act or omission of Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible; (b) those Hazardous Environmental Conditions identified in paragraph C above; and (c) the creation or exacerbation of any Hazardous Environmental Condition due to the negligence, recklessness or willful misconduct of Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend and hold harmless

DC Water and all of its representatives, appointed officials, officers, employees, and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from (a), (b) and/or (c) above.

- H. The provisions of Paragraphs 4.2, 4.3, and 4.4 do not apply to any Hazardous Environmental Condition uncovered or revealed at the Site.

4.7 *Historical Artifacts.*

- A. All articles of historical or scientific value, including but not limited to coins, fossils, and articles of antiquity, which may be uncovered by Contractor during the progress of the Work shall become DC Water's property. Such findings shall be reported immediately to DC Water, who will determine the method of removal, where necessary, and the final disposition thereof. If Contractor establishes that such discoveries have directly and materially impacted Contractor's cost or time of performance, then Contractor shall be entitled to request an appropriate Change Order, provided Contractor satisfies the requirements of ARTICLE 9 through ARTICLE 11 herein, as applicable.

ARTICLE 5 BONDS AND INSURANCE

5.1 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Contract Documents.
- B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of Companies Holding Certificates of DC Water as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- C. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.1B, Contractor shall notify DC Water within five days of the date Contractor knew, or should have known, of the bankruptcy, insolvency, termination, or cessation, and shall within 20 days of the bankruptcy, insolvency, termination, or cessation substitute another Bond and surety, both of which shall comply with the requirements of Paragraphs 5.1B and 5.2.

5.2 *Licensed Sureties and Insurers*

- A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by DC Water or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the District of Columbia to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Project Insurance Section of the Contract Documents.

5.3 *Certificates of Insurance*

- A. Contractor shall deliver to DC Water, with copies to each additional insured identified in the Project Insurance Section of the Contract Documents, certificates of insurance (and other evidence of insurance requested by DC Water or any other additional insured) which Contractor is required to purchase and maintain.
- B. DC Water shall deliver to Contractor, with copies to each additional insured identified in the Project Insurance Section of the Contract Documents, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which DC Water is required to purchase and maintain.

5.4 *Contractor's Liability Insurance*

- A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) by any other person for any other reason;
 - 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
 - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
 - 7. claims that would be covered as part of the required insurance as otherwise outlined in the Project Insurance Section of the Contract Documents.
- B. The policies of insurance so required by this Paragraph 5.4 to be purchased and maintained shall:
 - 1. with respect to insurance required by Paragraphs 5.4A.3 through 5.4A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) DC Water, DC Water's Consultants, and any other individuals or entities identified in the Project Insurance Section of the Contract Documents, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits provided in the Project Insurance Section of the Contract Documents or required by Laws or Regulations, whichever is greater;
3. include completed operations insurance;
4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.9, 6.13, and 6.21;
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 12.9; and
6. with respect to completed operations liability insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least three years after final payment (and Contractor shall furnish DC Water and each other additional insured identified in the Project Insurance Section of the Contract Documents, to whom a certificate of insurance has been issued, evidence satisfactory to DC Water and any such additional insured of continuation of such insurance at final payment and at one year thereafter).

C. Obligation of the Contractor:

Contractor shall ensure that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to DC Water and to each other additional insured identified in the Project Insurance Section of the Contract Documents to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.3 will so provide);

5.5 *DC Water's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.4, DC Water, at DC Water's option, may purchase and maintain at DC Water's expense DC Water's own liability insurance as will protect DC Water against claims which may arise from operations under the Contract Documents.

5.6 *Property Insurance*

- A. Unless otherwise provided in the Project Insurance Section of the Contract Documents, the Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. This insurance shall:
1. include the interests of DC Water, Contractor, Subcontractors, DC Water's Consultants, and any other individuals or entities identified in the Project Insurance Section of the Contract Documents, and the public officials, officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;
 2. be written on a Builder's Risk (or Installation Floater for construction statements or equipment installations for which Builder's Risk Insurance may not be pertinent or for which an Installation Floater is more pertinent by definition), all-risk or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, flood (unless the Project Insurance Section of the Contract Documents otherwise states that flood insurance is not required or

establish amounts less than full replacement value), collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Project Insurance Section of the Contract Documents;

3. include reasonable and customary deductibles, subject to any maximum deductible amounts as may be provided in the Project Insurance Section of the Contract Documents or required by Laws and Regulations. The risk of loss within any deductible amount shall be borne solely by the Contractor without recourse against DC Water;
 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 5. cover materials and equipment stored at the Site or at another location that was agreed to in writing by DC Water prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by DC Water;
 6. allow for partial utilization of the Work by DC Water;
 7. include testing and startup; and
 8. a separate Equipment/Machinery Breakdown policy shall be purchased and maintained, if this type of insurance is not included in the Builder's Risk (or installation floater, if applicable) with a limit equal to the full replacement cost of the machinery and equipment.
 9. be maintained in effect until final payment is made unless otherwise agreed to in writing by DC Water and Contractor with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.
- B. The Contractor shall be solely responsible for any loss or damage to their personal property including, without limitation, their tools and equipment, mobile construction equipment, scaffolding, temporary structures, whether owned, borrowed, used, leased or rented by the Contractor and/or subcontractor. Contractor and/or Subcontractor may at their sole discretion, purchase and maintain insurance (separately or as part of the Builder's Risk/Installation Floater Policy required in 5.6A) or self-insure such equipment and property, and any deductible or self-insured amount in relation thereto shall be Contractor's sole responsibility without recourse against DC Water.
- C. All the policies of insurance required to be purchased and maintained in accordance with Paragraph 5.6A shall contain a provision or endorsement that the coverage afforded will not be canceled until at least 30 days prior written notice has been given to DC Water and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.7.

5.7 *Waiver of Rights*

- A. DC Water and Contractor intend that all policies purchased in accordance with Paragraph 5.6A will provide primary coverage to all insureds for all losses and damage caused by the perils or causes of loss covered thereby. All such policies shall permit the waiver of rights herein or otherwise contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery, by subrogation or otherwise, against any of the insureds thereunder or against any Other Project Contractor. DC Water and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of

them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss required to be covered by such policies and any other property insurance pertinent to the Work; or any loss subject to deductibles in such policies or otherwise self-insured; and, in addition, waive all such rights against Subcontractors, DC Water's Consultants, and all other individuals or entities identified in the Project Insurance Section of the Contract Documents to be listed as insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by DC Water or other party as trustee or otherwise payable under any policy so issued.

- B. Contractor and Subcontractors of every tier are responsible for their own tools and equipment, construction trailers and their contents and temporary scaffolding whether owned, leased, rented or borrowed and will hold harmless DC Water and Other Project Contractors for loss or damage to their tools and equipment. If insured, the insurance policy covering such tools and equipment will permit such waiver or otherwise include a waiver of subrogation and any other rights of recovery in favor of DC Water and the Other Project Contractors. Contractor and Subcontractors of every tier shall require all of their Subcontractors to similarly hold DC Water and Other Project Contractors harmless for any loss or damage to their tools and equipment and require their insurer to permit such waiver or include a specific waiver of subrogation provision in any of their insurance policies covering such tools and equipment
- C. DC Water waives all rights against Contractor, Subcontractors, DC Water's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to DC Water's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by DC Water; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by DC Water during partial utilization pursuant to Paragraph 13.6, after Substantial Completion pursuant to Paragraph 13.5, or after final payment pursuant to Paragraph 13.8.
- D. Any insurance policy maintained by DC Water covering any loss, damage or consequential loss referred to in Paragraph 5.7C shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or DC Water's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.8 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.6A will be adjusted jointly by Contractor and DC Water, provided, however, that DC Water shall have the right to approve any portion of a proposed adjustment that relates solely to DC Water's insured loss. Each party agrees to assist the other in the adjustment of any losses. To the extent proceeds are made payable to Contractor, Contractor shall hold such proceeds as fiduciary for the insureds, as their interests may appear, subject to the requirements of any pertinent mortgage clause and of Paragraph 5.8B. Contractor shall deposit in a separate

account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced by Contractor in accordance with the Contract Documents.

- B. Contractor and DC Water, as fiduciaries, shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to their exercise of this power. If such objection be made, Contractor and DC Water, as fiduciaries, shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Contractor and DC Water, as fiduciaries, shall adjust and settle the loss with the insurers.

5.9 *Acceptance of Insurance; Option to Replace*

- A. If either DC Water or Contractor has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by the other party in accordance with ARTICLE 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing. DC Water and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the insurance required of such party by the Contract Documents, such party shall promptly notify the other party in writing of such failure. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If DC Water finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 13.5, the property insurance required in 5.6A. shall not be canceled or permitted to lapse on account of any such partial use or occupancy. The contractor shall notify the insurers providing the property insurance pursuant to Paragraph 5.6A and secure their acknowledgement of such notice and written confirmation that such occupancy or use will not impact the property insurance coverage in place. The insurers providing the property insurance shall consent by endorsement on the policy or policies.

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

6.1 *General*

- A. Contractor shall be responsible for performing the Work in a manner consistent with the Contract Documents, applicable Laws and Regulations and Good Industry Practice.
- B. Contractor shall perform all Work efficiently and with the requisite expertise, skill and competence to satisfy the requirements of this Contract.

6.2 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of DC Water. If required by DC Water, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the pertinent Supplier, except as otherwise may be provided in the Contract Documents. Materials shall be stored so as to assure the preservation of their quality and acceptability for the Work. Stored materials, even though approved before storage, may again be inspected prior to their use in the Work.

6.3 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.6 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to DC Water for acceptance (to the extent indicated in Paragraph 2.6 and the Construction Schedules Section) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will conform generally to the Progress Schedule then in effect and additionally shall comply with any provisions of the General Requirements pertinent thereto.
 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of ARTICLE 11.
 3. If, in the opinion of DC Water, Contractor falls behind the most current Progress Schedule for any reason other than those under Paragraph 11.3A, Contractor shall take steps, including, but not limited to, increasing the number of personnel, shifts, and/or overtime operations, days of work, and/or amount of construction equipment until such time as the Work is back on schedule. Contractor shall also submit for review, not later than the time of submittal of the next request for partial payment, such supplementary schedule or schedules as may be necessary to demonstrate the manner in which the acceptable rate of progress will be regained, all without additional cost to DC Water.
 4. During any adverse weather, including unusually heavy rain, unusual wind conditions, unusually high or low temperature, etc., Contractor shall, at its own expense, take necessary precautions, including protect of the Site, adjustment of work hours, use of alternative materials, etc., so that the Work may progress properly and is satisfactory in all respects.
 5. Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default terms of this Contract.

6.4 *Supervision and Superintendence*

- A. Contractor shall supervise, coordinate, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Unless

otherwise specified in the Contract Documents, Contractor shall be solely responsible for the means, methods, techniques, sequences, procedures of construction. Contractor shall not be responsible for the negligence of DC Water in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. Contractor shall be responsible to see that the completed Work complies accurately with the terms, provisions, conditions, lines, grades, typical cross-sections, dimensions, and other aspects of the Contract Documents. Contractor shall furnish all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory completion of the Project and shall pursue the Work aggressively and diligently to complete the Work within the Contract Times.

- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent thereto that is acceptable to DC Water and who shall not be replaced without written notice to DC Water except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor. DC Water shall have the right, at its discretion, to require Contractor to replace any of Contractor's management personnel if replacement of such personnel would be in the interest of DC Water.

6.5 *Progress Meetings*

- A. The Contractor and his major Subcontractors shall hold and attend progress meetings with DC Water (unless DC Water's absence is excused by DC Water) at the Site at least monthly. DC Water may require progress meetings to be held more frequently at no additional cost to DC Water. Minutes of progress meetings shall be prepared, maintained and circulated by DC Water.

6.6 *Labor; Working Hours; Operation of Existing Facilities*

- A. Contractor shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and Contractor shall not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without DC Water's written consent (which will not be unreasonably withheld) given after prior written notice to DC Water.
- C. No Work shall be done between 7:00 p.m. and 7:00 a.m. without permission from DC Water. However, emergency work may be done without prior permission. Additionally, working hours may be prescribed, reduced, limited, or adjusted based on restrictions established by permitting agencies or as defined elsewhere in the Contract Documents.
- D. Night Work may be undertaken as a regular procedure with the permission of DC Water. Such permission, however, may be revoked at any time by DC Water if Contractor fails to maintain adequate equipment and supervision for the proper prosecution and control of the Work at night.
- E. The continuous operation of all existing facilities of DC Water is required and shall in no way be affected by Contractor's operations unless DC Water gives written permission to do so.

6.7 *Substitutes and Or-Equals*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains words reading that no like, equivalent, or-equal item, or substitution is permitted, or is followed by “Without Exception,” other items of material or equipment, or material or equipment of other Suppliers may be submitted to DC Water for review under the circumstances described below. Requests for review of equivalency will not be accepted by DC Water from anyone except Contractor, and such requests will not be considered until after the Contract has been awarded.
1. *Or-Equal Items:* If in DC Water’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by DC Water as an or-equal item, in which case review and approval of the proposed item may, in DC Water’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.7A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment DC Water determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole, and (iii) it has a proven record of performance and availability of responsive service;
 - b. Contractor certifies that: (i) there is no increase in cost to DC Water; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.
 2. *Substitute Items:*
 - a. If in DC Water’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an or-equal item under Paragraph 6.7A.1, it will be considered a proposed substitute item.
 - b. Contractor shall submit sufficient information as provided below to allow DC Water to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by DC Water from anyone other than Contractor.
 - c. The procedure for review by DC Water will be as set forth in Paragraph 6.7A.2.d, as supplemented in the Supplementary Conditions and as DC Water may decide is appropriate under the circumstances.
 - d. Contractor shall first make written application to DC Water for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application shall state the extent, if any, to which the use of the proposed substitute item will prejudice Contractor’s achievement of Substantial Completion on time,

whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with DC Water for work on the Project) to adapt the design to the proposed substitute item, and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by DC Water in evaluating the proposed substitute item. DC Water may require Contractor to furnish additional data about the proposed substitute item.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by DC Water. Contractor shall submit sufficient information to allow DC Water, in DC Water's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by DC Water will be similar to that provided in Paragraph 6.7A.2.
- C. *DC Water's Evaluation:* DC Water will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.7A and 6.7B. DC Water will be the sole judge of acceptability. No or-equal or substitute will be ordered, installed or utilized until DC Water's review is complete, which will be evidenced by either a Change Order or an approved Submittal for an or-equal or substitute. DC Water will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* DC Water may require Contractor to furnish, at Contractor's expense, a special performance guarantee or other surety with respect to any substitute.
- E. *DC Water's Cost Reimbursement:* DC Water will record time required by DC Water and DC Water's Consultants in evaluating substitute items proposed or submitted by Contractor pursuant to Paragraphs 6.7A.2 and 6.7C and in making changes in the Contract Documents (or in the provisions of any other direct contract with DC Water for work on the Project) occasioned thereby. Whether or not DC Water approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse DC Water for the actual costs of DC Water and DC Water's Consultants for evaluating each such proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or or-equal at Contractor's expense. The cost of any changes in the Work made necessary by the use of "or-equal" or substitute items proposed by Contractor and accepted by DC Water shall be borne solely by Contractor.

6.8 Concerning Subcontractors, Suppliers, and Others

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to DC Water as indicated in Paragraph 6.8B), whether initially or as a replacement, against whom DC Water may have reasonable objection.

- B. If the Bidding Documents or the Contract Documents require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to DC Water in advance for acceptance by DC Water by a specified date prior to the Effective Date of the Contract, and if Contractor has submitted a list thereof in accordance with the Bidding Documents or the Contract Documents, DC Water's acceptance, which shall be in writing, of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation, in which case Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. No acceptance by DC Water of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of DC Water to reject defective Work.
- C. Contractor shall be fully responsible to DC Water for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between DC Water and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of DC Water to pay or to see to the payment of any monies due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with DC Water through Contractor.
- F. The Divisions and Sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the pertinent terms and conditions of the Contract Documents for the benefit of DC Water. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.6, the agreement between the Contractor and the Subcontractor or Supplier shall contain provisions whereby the Subcontractor or Supplier waives all rights against DC Water, Contractor, DC Water's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance pertinent to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor shall obtain the same.

6.9 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.

If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of DC Water its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by DC Water in the Contract Documents. Contractor shall indemnify and hold harmless DC Water, DC Water's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all claim, court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.10 *Permits and Utility Charges*

- A. DC Water will provide the Contractor with those permits specifically noted in the Contract Documents as being furnished by DC Water. Unless otherwise provided in the Contract Documents as being the responsibility of DC Water, Contractor shall obtain and pay for all construction, trade and other permits and licenses required for the Work. DC Water shall reasonably assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are in effect at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Contract.
- B. Unless otherwise provided in the Contract Documents, DC Water shall pay all charges of utility owners for connections to the Work, either directly or by reimbursing Contractor through an allowance so designated in the Contract Documents. Notwithstanding the preceding sentence, Contractor shall have the responsibility to schedule and coordinate with such utility owners connections to the Work.

6.11 *Laws and Regulations*

- A. Contractor shall give all notices, comply with, and keep fully informed at all times with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, DC Water shall not be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing, or having reason to know, that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all claim, court or arbitration or other dispute resolution costs) arising out of or relating to such Work.
- C. Changes in Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an equitable adjustment in Contract Price or Contract Times. If DC Water and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of, any such equitable adjustment, a Claim may be made therefor as provided in ARTICLE 15.
- D. *Safety and Health Regulations:* OSHA "Safety and Health Regulations for Construction", Chapter XVII of Title 29, CFR Part 1926, shall apply to Work under this Contract. The U.S. Department of Labor will be responsible for compliance review and enforcement of the regulations.

- E. *Employment Requirements:* Specific employment requirements, in addition to those that are imposed by Laws or Regulations, shall be as specified herein and in Section 00 76 00 – Labor Provisions.
- F. *Nondiscrimination in Employment:* Contractor and Subcontractors shall not discriminate in any manner against any employee or applicant for employment in violation of Section 211 of the District of Columbia Human Rights Act (D.C. Law 2-38; D.C. Code Anno. Section 2-1401.01, as amended); shall include a similar clause in every Subcontract, except Subcontracts for standard commercial supplies or raw materials; and shall post in a conspicuous place, available to employees and applicants for employment, a notice setting forth the provisions of anti-discrimination clause set out in Section 251 of the District of Columbia Human Rights Act (D.C. Code Anno. Section 2-1402.51, as amended).

6.12 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the District of Columbia which are applicable during the performance of the Work.
- B. *Federal Excise Tax:* Materials, supplies, and equipment are not subject to the Federal Manufacturer’s Excise Tax, as set forth in the applicable Laws and Regulations, if they are furnished or used in connection with the Contract, provided that title to such materials, supplies, and equipment passes to DC Water under the Contract. The Contractor shall in such cases furnish his Subcontractors and Suppliers with a purchaser’s certificate in the form prescribed by the U.S. Internal Revenue Service.
- C. *Sales and Use Taxes:* Materials which are physically incorporated as a permanent part of real property are not subject to District of Columbia Sales and Use Tax, as set forth in the applicable Laws and Regulations. The Contractor shall, when purchasing such materials, furnish his suppliers with a Contractor’s Exempt Purchase Certificate in the form prescribed in the Sales and Use Tax Regulations of the District of Columbia. Where the Contractor, Subcontractor or Supplier has already paid the Sales and Use Tax on material, as prescribed above, the Sales and Use Tax Regulations of the District of Columbia permit the Contractor, Subcontractor or Supplier to deduct the sales or use tax on the purchase price of the same of his next monthly return as an adjustment. However, the Contractor, Subcontractor or Suppliers must satisfy DC Water that no sum in reimbursement of such tax was included in the Contract or else that DC Water has received a credit under the Contract in an amount equal to such tax.
- D. District of Columbia Sales and Use Tax shall be paid on any material and supplies, including equipment rentals, which do not become a physical part of the finished project (See District of Columbia Sales and Use Tax Administration Ruling No. 6.).

6.13 Use of Site and Other Areas

- A. Limitation on Use of Site and Other Areas:
 - 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work. Damages described above shall include but are not limited to damages to any structures, equipment, vegetation, utilities, or other improvements thereof. For avoidance of doubt when it is necessary to cross curbs,

sidewalks, parking lots, public or private roads, etc., the Contractor shall protect those areas from damage and repair or pay for the repair of any damages.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. If the Contractor fails to resolve the claim with the third-party or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless DC Water, DC Water's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all claim, court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against DC Water, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work, Contractor shall clean the Site and make it ready for utilization by DC Water. At the completion of the Work, Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.14 *As-Built Documents*

- A. Contractor shall maintain in a safe place at the Site one As-Built copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These As-Built Documents together with all approved Samples and a counterpart of all approved Submittals shall be available to DC Water for reference. Upon completion of the Work and before final payment, these As-Built Documents, Samples, and Submittals shall be delivered to DC Water, provided, however, that if the Contract Documents require such As-Built Documents, Samples, and Submittals to be submitted to DC Water at an earlier time, Contractor shall be obligated to do so.

6.15 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all pertinent Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in Paragraph 6.15A.2 or 6.15A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of DC Water or DC Water's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and DC Water has issued a notice to the Contractor in accordance with Paragraph 13.7 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- C. Contractor shall maintain an accurate record of all accidents resulting in death, injury, occupational disease, and/or damage to property, materials, supplies, and equipment incident to work performed under the Contract. Copies of these reports shall be furnished to DC Water within two working days after occurrence.
- D. DC Water will notify Contractor of any noncompliance with the foregoing provisions or any condition, which DC Water has become aware of, that poses a serious or imminent danger to the health or safety of anyone in the vicinity of the Site and such notification shall include the action to be taken by the Contractor. Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to Contractor or Contractor's representative at the Site, shall be deemed sufficient for the purpose. If Contractor fails or refuses to comply promptly, DC Water 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 Work Orders shall be the subject of a Claim by Contractor for extension of time or for excess costs or damages.
- E. These provisions shall be pertinent to all Subcontractors, and compliance with these provisions by Subcontractors shall be the responsibility of Contractor.
- F. Prior to commencement of the Work, the Contractor shall:
1. Submit in writing to DC Water for review of their program for complying with this Article for accident prevention.
 2. Meet with DC Water's Safety Representative after submission of the above program to develop a mutual understanding relative to the administration of the overall safety program.

6.16 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.17 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of the Safety Data Sheet (SDS) or other hazard communication information required to be made available to, or exchanged between or among, employers at the Site in accordance with Laws or Regulations.

6.18 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give DC Water prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If DC Water determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.19 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with DC Water. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 14.5 or as DC Water and Contractor may otherwise agree in writing.

6.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to DC Water that all Work will be in accordance with the Contract Documents and will not be defective. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- B. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by DC Water;
 - 2. recommendation by DC Water or payment by DC Water of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by DC Water or any payment related thereto by DC Water;
 - 4. use or occupancy of the Work or any part thereof by DC Water;
 - 5. any acceptance by DC Water or any failure to do so;

6. any review and approval of a Submittal or Sample submittal or the issuance of a notice of acceptability by DC Water;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by DC Water.

6.21 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless DC Water, DC Water's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all claim, court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:
1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and
 2. is caused in whole or in part by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein.
- B. In any and all claims against DC Water or any of its consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.21A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.21A shall not extend to the liability of DC Water and DC Water's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:
1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Work Change Directives, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.22 *Access to Certain Agencies*

- A. Contractor shall provide access to the Work whenever it is in preparation or in progress to representatives of the District, federal government, U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers, U.S. Occupational Safety and Health Administration (OSHA), and any other persons or entities designated by DC Water. Contractor shall provide all necessary and proper facilities for such access and inspection.
- B. Contractor shall provide the Grants Officer, the Comptroller General of the United States, or any authorized representative access to any books, documents, papers, and records of Contractor which are pertinent to the Work for the purpose of making audit, examination, excerpts, and transcriptions thereof.

ARTICLE 7 DC WATER'S ROLE DURING CONSTRUCTION

7.1 *General*

- A. The duties and responsibilities and the limitations of authority of DC Water and DC Water's Consultants used on the Project during construction are set forth in the Contract Documents and will not be changed without written consent of DC Water.
- B. DC Water shall have the authority to stop the Work whenever such action may be needed, in their sole discretion, to prevent improper execution of the Work or to otherwise protect the interests of DC Water.

7.2 *Project Representative*

- A. DC Water may furnish a Project Representative to assist DC Water in providing more extensive observation of the Work. The authority, responsibilities and limitations thereon of any such Project Representative and assistants will be as provided in the Supplementary Conditions and as stated in Paragraph 7.6. If DC Water designates another representative or agent to represent DC Water at the Site who is not DC Water's Consultant, agent or employee; the authority, responsibilities and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

7.3 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, DC Water shall issue all communications to Contractor through DC Water and, if so designated in the Contract Documents, DC Water's Project Representative or DC Water's Consultant.

7.4 *Clarifications and Interpretations*

- A. DC Water will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as DC Water may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations shall be binding on the Contractor.

7.5 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. DC Water will determine the requirements of the Contract Documents and acceptability of the Work thereunder, subject to the Contractor's right to file a Claim pursuant to the terms of these General Conditions

7.6 *Limitations on DC Water's Responsibilities*

- A. DC Water will not supervise, direct, control, or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions

and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations pertinent to the performance of the Work. DC Water will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- B. DC Water will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- C. The limitations upon DC Water and responsibility set forth in this Paragraph 7.6 shall also apply to DC Water's Consultants, Project Representative, and assistants.

ARTICLE 8 OTHER WORK

8.1 *Related Work at Site*

- A. DC Water may perform other work related to the Project at the Site by DC Water's employees, or let other direct contracts therefor, or have other work performed by utility owners (such other contractors and utility owners referred to as "Other Project Contractors"). If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if DC Water and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefore as provided in ARTICLE 15.
- B. Contractor shall afford each Other Project Contractor (and DC Water, if DC Water is performing the other work with DC Water's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of DC Water and the Other Project Contractors whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such Other Project Contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between DC Water and such Other Project Contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by Other Project Contractors, Contractor shall inspect such other work and promptly report to DC Water in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- D. If the Contractor causes damage to the work or property of any Other Project Contractor, or to other work on the Site, or delay or interfere with DC Water's work on ongoing operations, facilities, or adjacent facilities, or said Other Project Contractor's work, the Contractor shall be liable for the same; and, in the case of an Other Project Contractor, the Contractor shall attempt to resolve the claim with such Other Project Contractor. If such

Other Project Contract sues DC Water on account of any damage, delay, or interference caused by the Contractor, Contractor agrees to indemnify and defend DC Water.

- E. If an Other Project Contractor causes damage to the Work or to the property of the Contractor, or causes delay of interference with the Contractor's performance of the Work, the Contractor shall present directly to said Other Project Contractor any claim it may have as a result of such damage, delay, or interference (with an information copy to DC Water), and shall attempt to resolve its claim such Other Project Contractor.

ARTICLE 9 CHANGES IN THE WORK

9.1 *Authorized Variations in Work*

- A. DC Water may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and shall be binding on the Contractor, who shall perform the Work involved promptly. If the Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of such adjustment, a Claim may be made therefore as provided in ARTICLE 15.

9.2 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, DC Water may, at any time, or from time-to-time, by written order to Contractor, make any change in the Work within the general scope of the Contract, including but not limited to changes: (i) in the Drawings and Specifications; (ii) in the time, method, or manner of performance of the Work; (iii) in DC Water-furnished facilities, equipment, materials, services or site; or (iv) directing acceleration in the performance of the Work.
- B. If Contractor believes that: (i) it has received from DC Water any order, statement, direction, instruction, interpretation, or determination that constitutes a change; or (ii) any conduct of DC Water should be treated as a change under this Article or entitles the Contractor to an equitable adjustment hereunder, then Contractor shall furnish DC Water written notice within seven days of such order, statement, direction, instruction, interpretation, determination or conduct.
- C. Subject to the overall provisions of ARTICLE 9, if any change causes an increase or decrease in the Contractor's cost or the time required to perform any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly by either a Unilateral Change Order, Work Change Directive, or Change Order; provided, however, that except for claims based on defective specifications, no claim for any change shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as required under Paragraph 9.2B above unless this 20 day requirement is extended in writing by DC Water. In the case of defective specifications for which DC Water is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with those defective specifications.
- D. If the Contractor intends to assert a claim for an equitable adjustment under this Paragraph 9.2, it must, within 30 days after receipt of a written order under Paragraph 9.2A or the furnishing of a written notice under Paragraph 9.2C, submit to DC Water a written statement setting forth the general nature and monetary extent of such claim. DC Water may extend the 30-day period. The statement of claim may be included in the notice

furnished under Paragraph 9.2D. No claim by the Contractor for an equitable adjustment shall be allowed if made after final payment under this Contract.

- E. DC Water may, at any time, or from time-to-time, make a change pursuant to Paragraph A above, by issuing a Unilateral Change Order or Work Change Directive on DC Water's terms (including a promise to pay the Contractor a "not-to-exceed" amount). If the Contractor agrees with the Unilateral Change Order or Work Change Directive, it shall duly execute such document. If the Contractor disputes any aspect of such Unilateral Change Order or Work Change Directive, it shall have the right to proceed in accordance with Paragraph 9.2F below.
- F. In the event of a dispute between DC Water and the Contractor as to: (i) whether any Work is included in the scope of the Contract such that the Contractor would be obligated to provide that Work at no additional cost to DC Water; or (ii) any Unilateral Change Order or Work Change Directive, DC Water may direct the Contractor to perform the Work as DC Water deems appropriate. If the Contractor considers such direction to be a change in the scope of the Contract entitling the Contractor to a change in the Contract Price, Contract Times, or other relief, the Contractor must provide the notice required by Paragraph 9.2C; provided, however, that Contractor shall continue proceeding with the Work and shall comply with DC Water's directions and maintain the Progress Schedule. If DC Water and Contractor are unable to resolve the disputes set forth in this Paragraph, the Contractor may make a Claim therefor as provided in ARTICLE 15.
- G. Failure of the Contractor to strictly comply with the notice and other submission requirements of this Paragraph 9.2 shall constitute a waiver of Contractor's right to seek relief hereunder.

9.3 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.4, except in the case of an emergency as provided in Paragraph 6.18, or in the case of uncovering Work as provided in Paragraph 12.4B.

9.4 *Execution of Change Orders and Work Change Directives*

- A. DC Water and Contractor shall execute appropriate Change Orders covering:
 - 1. changes in the Work which are: (i) ordered by DC Water pursuant to Paragraph 9.2A, (ii) required because of acceptance of defective Work under Paragraph 12.10A or DC Water's correction of defective Work under Paragraph 12.8, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by DC Water pursuant to ARTICLE 15; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and pertinent Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.19A.
- B. The Contract Price and Contract Times can only be adjusted by a duly executed Change Order.

- C. DC Water shall have the right, in its sole discretion, to make changes in the Work through the issuance of a Work Change Directive and make payment for such Work Change Directive either: (a) through the Work Change Directive Allowance, if such allowance is included in the Contract Documents; or (b) a subsequently issued Change Order.

9.5 *Notification to Surety*

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice shall be Contractor's responsibility. The amount of each pertinent Bond will be adjusted to reflect the effect of any such change.

ARTICLE 10 COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

10.1 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded by Paragraph 10.1B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order, Work Change Directive, or a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 10.1B, and shall include only the following items.
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by DC Water and Contractor. Such employees shall include without limitation, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include salaries and wages plus the cost of fringe benefits, which may include but are not limited to social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay pertinent thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by DC Water.
 - 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith.
 - 3. Equipment Charges:
 - a. *Rented Equipment:* Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Contractor will be based on receipted invoices which shall not exceed rates given in the current edition of the Associated Equipment Distributors' manual: "National Averaged Rental Rates and Model References Data for Construction Equipment." If actual rental rates exceed manual rates, written justification shall be furnished to DC Water for consideration. No additional allowance will be made for overhead and profit. The Contractor shall submit written certification to DC Water that any required rented

equipment is neither owned by nor rented from the Contractor or an affiliate of or subsidiary of the Contractor.

- b. *Contractor's Equipment:* Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate from the Associated Equipment Distributor's manual by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to DC Water will be based on one-half the derived hourly rate under this subsection.
4. All cash discounts shall accrue to Contractor unless DC Water deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to DC Water. All trade discounts, rebates and refunds from sale of surplus materials and equipment shall accrue to DC Water, and Contractor shall make provisions so that they may be obtained.
5. *Payments made by Contractor to Subcontractors for Work performed by Subcontractors:* If required by DC Water, Contractor shall obtain competitive bids from subcontractors acceptable to DC Water and Contractor and shall deliver such bids to DC Water, who will then determine which bids, if any, will be acceptable. If any Subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 10.1.
6. Costs of engineers, architects, testing laboratories, surveyors, and others employed for services specifically related to the Work, but excluding costs of those consultants identified in Paragraph 10.1B.6.
7. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by DC Water, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.
 - e. Deposits lost for reasons caused by DC Water.
 - f. The cost of utilities, fuel, and sanitary facilities at the Site.

10.2 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to DC Water. Contractor agrees that:
 - 1. the allowances include the cost to Contractor (less any pertinent trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- B. If the Contract Documents contain a Work Change Directive Allowance, such allowance is for the sole use of DC Water to use for the payment of Work Change Directives.
- C. Prior to final payment, if the actual amount due the Contractor on account of Work covered by allowances exceed the Work Change Directive amount, an appropriate Change Order will be issued to cover the excess amounts due Contractor, and the Contract Price shall be correspondingly adjusted.

10.3 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the Estimated Quantity of each item as indicated in the Schedule of Prices. The Estimated Quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by DC Water.
- B. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- C. Unless otherwise indicated herein, the unit price of an item of Unit Price Work may be subject to reevaluation and adjustment by Change Order or Work Change Directive if the variation in the actual quantity of an item of Unit Price Work performed by Contractor differs by more than 25 percent from the Estimated Quantity of that item indicated in the Bid. Unless otherwise agreed to in writing by DC Water, when the actual quantity of an item of Unit Price Work is more than 25 percent above the Estimated Quantity of that item, Contractor shall only be entitled its Cost of Work plus a 10 percent fee for each additional item of Unit Price Work above 125 percent of the Estimated Quantity of that item; provided however, if the Cost of Work plus a 10 percent fee exceeds original bid price for each additional item of Unit Price Work above 125 percent of the Estimated Quantity for that item, then Contractor will only be entitled to its original bid price for the respective item for such additional Unit Price Work. When the final actual quantity of an item of Unit Price Work is less than 75 percent of the Estimated Quantity for that item, Contractor shall be entitled to additional compensation in the amount set forth below:
 - 1. $(75 \text{ percent of the Estimated Quantity of the item} - \text{the actual quantity of the item}) * \text{the unit price for the respective bid item} * 5\% = \text{Additional Compensation.}$

ARTICLE 11 CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

11.1 *Change of Contract Price*

- A. The Contract Price may only be changed by a Unilateral Change Order, Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by Contractor to DC Water in accordance with the provisions of ARTICLE 15.
- B. The value of any Work covered by a Change Order, Work Change Directive, or any Claim for an adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 10.3); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.1C); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 11.1B.2, by the Cost of the Work (determined as provided in Paragraph 10.1) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.1C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 10.1A.1 and 10.1A.2, the Contractor's fee shall be fifteen percent;
 - b. where one or more tiers of Subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 11.1C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 10.1A.1 and 10.1A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - c. no fee shall be payable on the basis of costs itemized under Paragraphs 10.1A.3, 10.1A.4, 10.1A.5, 10.1A.6, 10.1A.7, and 10.1B;
 - d. the amount of credit to be allowed by Contractor to DC Water for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - e. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.1C.2.a through 11.1C.2.d, inclusive.

- D. No allowance shall be made to the Contractor for loss of anticipated profits or unabsorbed home office overhead on account of any actual or claimed changes in the Work.
- E. Execution of a Unilateral Change Order, Change Order or Written Amendment by Contractor shall be binding and conclusive and shall operate as an accord and satisfaction as to all relief associated with such Unilateral Change Order, Change Order or Written Amendment. Contractor may not execute or accept a Change Order or Written Amendment subject to any conditions or reservation of rights or Claims which have not been disputed in accordance with Paragraph 15.1A. Any attempt by the Contractor to impose such conditions or reservations shall not be binding on DC Water. If the Contractor will not execute or accept the change, the Contractor shall proceed to perform the change order work required to complete the project satisfactorily and file a claim under ARTICLE 15.
- F. For change order requests that exceed or are expected to exceed \$100,000, Contractor shall submit a completed EPA Form 5700-41 as part of Contractor's pricing data. In addition, whenever any Subcontractor's Work under a change order request exceeds \$10,000, the Subcontractor shall submit a completed EPA Form 5700-41 as part of the cost proposal for said Work.

11.2 *Change of Contract Times*

- A. The Contract Times may only be changed by a Unilateral Change Order, Change Order or by a Written Amendment. Any disputed adjustment in the Contract Times shall be based on written notice submitted by the Contractor in accordance with the provisions of ARTICLE 15.
- B. A request or Claim by the Contractor for an adjustment to the Contract Times caused by any event must be accompanied by: (i) a reasonably detailed description of the effect of the impact on the critical path to the most current Progress Schedule; and (ii) supporting documentation. The mere existence of an event, including but not limited to orders, actions or inactions by DC Water, does not entitle Contractor to an increase in the Contract Times. Contractor's entitlement shall be dependent upon a demonstration that the event has impacted the critical path of the most current Progress Schedule (even if the Progress Schedule is not based on the critical path method). In addition to the above, Contractor shall comply with the Construction Schedules Section in the General Requirements.

11.3 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 11.2A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by DC Water, acts or neglect of utility owners or other contractors performing other work as contemplated by ARTICLE 8, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of DC Water, or other causes not the fault of and beyond control of DC Water and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times and, in the case of abnormal weather conditions, the Contractor has taken precautions as require by Paragraph 6.3A.4. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 11.3B.

- C. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 12 TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.1 Notice of Defects

- A. Prompt notice of all defective Work of which DC Water has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this ARTICLE 12.

12.2 Access to Work

- A. DC Water, DC Water's Consultants, other representatives and personnel of DC Water, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

12.3 Tests and Inspections

- A. Contractor shall give DC Water timely notice of readiness of the Work for all required inspections, tests, or approvals.
- B. Unless otherwise required, Contractor shall employ and pay for the services of an independent testing laboratory acceptable to DC Water to perform all inspections, tests, or approvals required by the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish DC Water the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for DC Water's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to DC Water.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of DC Water, it must, if requested by DC Water, be uncovered for observation.
- F. Uncovering Work as provided in Paragraph 12.3E shall be at Contractor's expense unless Contractor has given DC Water timely notice of Contractor's intention to cover the same and DC Water has not acted with reasonable promptness in response to such notice.
- G. Tests and inspections are for the sole benefit of DC Water. As such, the presence or absence of an inspector on behalf of DC Water at any inspection, or the failure of DC Water to report any deviation by the Contractor from the requirements of the Contract Documents shall not (1) relieve the Contractor of responsibility for adequate quality control measures, compliance with the Contract Documents, or damage to or loss of material, (2) constitute

or imply acceptance of any Work, or (3) affect the continuing rights of DC Water to hold Contractor responsible for failure to meet the requirements of the Contract Documents.

12.4 *Uncovering Work*

- A. If any Work is covered before DC Water has inspected such Work in accordance with the Contract Documents, it must, if requested by DC Water, be uncovered for DC Water's observation and replaced at Contractor's expense.
- B. If DC Water considers it necessary or advisable that covered Work be observed by DC Water or inspected or tested by others, Contractor, at DC Water's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as DC Water may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and DC Water shall be entitled to an appropriate decrease in the Contract Price.
- C. If uncovered Work, which has been previously inspected, tested and approved by DC Water per the terms herein, is found to meet Contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an adjustment to the Contract Times.

12.5 *DC Water May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, DC Water may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of DC Water to stop the Work shall not give rise to any duty on the part of DC Water to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

12.6 *Rejecting Defective Work*

- A. DC Water shall have authority to disapprove or reject Work which DC Water believes to be defective, or that DC Water believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. DC Water shall also have authority to require special inspection or testing of the Work whether or not the Work is fabricated, installed, or completed.

12.7 *Correction or Removal of Defective Work*

- A. Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by DC Water, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all claim, court or arbitration, or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

12.8 *DC Water May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from DC Water to correct defective Work or to remove and replace rejected Work as required by DC Water in accordance with Paragraph 12.7A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, DC Water may, after seven days written notice to Contractor (unless a shorter period of time is deemed necessary by DC Water for any emergency), correct and remedy any such deficiency and at DC Water's election may terminate for cause the Contractor's right to proceed.
- B. In exercising the rights and remedies under this paragraph, DC Water shall proceed expeditiously. In connection with such corrective and remedial action, DC Water may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which DC Water has paid Contractor but which are stored elsewhere. Contractor shall allow DC Water, DC Water's representatives, agents and employees, DC Water's other contractors, and DC Water's Consultants access to the Site to enable DC Water to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all claim, court or arbitration or other dispute resolution costs) incurred or sustained by DC Water in exercising the rights and remedies under this Paragraph 12.8 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and DC Water shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, DC Water may issue a Unilateral Change Order adjusting the Contract Price accordingly and the Contractor may make a Claim therefor as provided in ARTICLE 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by DC Water of DC Water's rights and remedies under this Paragraph 12.8.

12.9 *Correction Period*

- A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any pertinent special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by DC Water or permitted by Laws and Regulations as contemplated in Paragraph 6.13A is found to be defective, Contractor shall promptly, without cost to DC Water and in accordance with DC Water's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by DC Water, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, DC Water may have the defective Work corrected or repaired or may have the rejected Work removed and

replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all claim, court or arbitration, or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) shall be paid by Contractor.

- B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.
- C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 12.9, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed. In addition, the warranty period for any equipment installed, work performed, or services provided to correct or replace such defective Work shall comply with any warranty periods established in the Contract Documents for such Work and new warranty periods for the corrected or replaced Work shall begin from the date the correction or removal and replacement of the defective Work has been satisfactorily completed.
- D. Contractor's obligations under this Paragraph 12.9 are in addition to any other obligation or warranty. The provisions of this Paragraph 12.9 shall not be construed as a substitute for or a waiver of the provisions of any pertinent statute of limitation or repose.

12.10 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, DC Water prefers to accept it, DC Water may do so. Contractor shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all claim, court or arbitration, or other dispute resolution costs) attributable to DC Water's evaluation of and determination to accept such defective Work and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and DC Water shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the acceptance occurs after final payment, an appropriate amount shall be paid by Contractor to DC Water.

ARTICLE 13 PAYMENTS TO CONTRACTOR AND COMPLETION

13.1 *Cost-Loaded CPM Schedule*

- A. The cost-loaded CPM schedule (or a schedule of values where a cost-loaded CPM is not required) established as provided in Paragraph 2.6A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to DC Water. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.2 *Payment Procedures*

- A. *Submittal and Processing of Payments:* Contractor shall submit Applications for Payment in accordance with this ARTICLE 13, Section 00 50 00 – Contract, and Section 01 29 00 – Progress Payment Procedures. Applications for Payment will be processed by DC Water as provided herein.

- B. *Progress Payments and Retention:* DC Water shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as specified herein and in Section 00 50 00 – Contract and Section 01 29 00 – Progress Payment Procedures .
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated in Section 00 50 00 – Contract..
 2. Upon Substantial Completion, if DC Water considers the amount retained to be in excess of the amount adequate for the protection of DC Water, it may, at its discretion, release to the Contractor all or portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made therefor without retention of a percentage, less authorized deductions.
- C. *Final Payment:* Upon Final Completion and acceptance of all of the Work in accordance with Paragraph 13.7, DC Water shall pay the remainder of the Contract Price as provided in said Paragraph 13.8.

13.3 *Progress Payments*

- A. Applications for Payments:
1. At least ten (10) days before the date established for each progress payment request (but not more often than once a month), Contractor shall submit to DC Water for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. Unless otherwise specified or agreed to in writing by DC Water, no payment will be made for stored materials and equipment not yet incorporated into the Work.
 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
- B. During the progress of the Work, each Application for Payment shall be accompanied by Contractor's updated Progress Schedule, progress report, with such shop drawings schedules, value of material on hand included in application, and other data specified in Division 1 or reasonably required by DC Water.
- C. Review of Applications:
1. DC Water will, within ten (10) days after receipt of each Application for Payment, either notify Contractor that the Application for Payment has been approved or notify Contractor that DC Water will object to payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 2. By approving payment requested in an Application for Payment, DC Water will have relied upon the representations of Contractor that:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent

- tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 10.3, and to any other qualifications stated in the recommendation); and
- c. the conditions precedent to Contractor's being entitled to such payment have been fulfilled.
3. DC Water's review of Contractor's Work for the purposes of making payments shall not be deemed to impose responsibility on DC Water to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for Contractor's failure to comply with Laws and Regulations pertinent to Contractor's performance of the Work. Additionally, said review will not impose responsibility on DC Water to make any examination to ascertain how or for what purposes Contractor has used the monies paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to DC Water free and clear of any Liens.
 4. DC Water may refuse to approve the whole or any part of any Application for Payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in DC Water's opinion to protect DC Water from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Written Amendment, Unilateral Change Orders, or Change Orders;
 - c. DC Water has been required to correct defective Work or complete Work in accordance with Paragraph 12.8;
 - d. DC Water has actual knowledge of the occurrence of any of the events enumerated in Paragraph 14.2A;
 - e. claims filed or likely to be filed against DC Water for which the Contractor may be liable to DC Water;
 - f. failure of the Contractor to make payments properly to Subcontractors, Suppliers or its own laborers for materials and/or labor or amounts claimed by the Contractor's surety or insurer under any rights of subrogation;
 - g. a reasonable doubt that the Contract can be completed for then unpaid balance of the Contract Price;
 - h. damage to another contractor;
 - i. liquidated damages or other damages or compensation due DC Water for claims of DC Water against the Contractor;
 - j. any claim of DC Water or debt owed to DC Water arising from any other cause;
 - k. any retention(s) as specified in Section 00 50 00 – Contract. ;
 - l. failure to maintain As-Built Documents in accordance with Paragraph 6.14;
 - m. failure to update schedules properly in accordance with Paragraph 6.3; or

n. the cost of completing unfinished punch list or warranty work.

D. Payment Becomes Due

1. Thirty (30) days after DC Water's approval of an Application for Payment, the amount approved will become due subject to the provisions of Paragraph 13.3E, and when due will be paid by DC Water to Contractor.

E. Reduction in Payment

1. DC Water may refuse to make payment because:

- a. Claims have been made against DC Water on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to DC Water to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling DC Water to a set-off against the amount recommended; or
- d. DC Water has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 13.3C.4.a through 13.3C.4.n, or Paragraph 14.2A.

2. If DC Water refuses to make payment of the full amount requested by Contractor in the Application for Payment, DC Water must give Contractor immediate written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. DC Water shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by DC Water and Contractor, when Contractor corrects to DC Water's satisfaction the reasons for such action.

3. If it is subsequently determined that DC Water's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 13.3D.1.

13.4 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to DC Water no later than the time of payment free and clear of all Liens. The transfer of title pursuant to this Article 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 waiving the right of DC Water to require the fulfillment of all of the terms of the Contract.

13.5 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use, Contractor shall notify DC Water in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that DC Water issue a certificate of Substantial Completion. Promptly thereafter, the Contractor and DC Water shall make an inspection of the Work to determine the status of completion. If DC Water does not consider the Work substantially complete, DC Water will notify Contractor in writing giving the reasons therefor. If DC Water considers the Work substantially complete, DC Water will prepare and deliver to the Contractor a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to

the certificate a tentative list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion, DC Water will deliver to the Contractor a written determination as to division of responsibilities pending final payment between DC Water and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees.

- B. DC Water shall have the right to exclude Contractor from the Site after the date of Substantial Completion, but DC Water shall allow Contractor reasonable access to complete or correct items on the tentative list.
- C. When the jurisdiction having authority requires a facility or any portion of a facility to be certified for Beneficial Occupancy, issuance of the certificate of Beneficial Occupancy is required prior to receiving Substantial Completion.

13.6 *Partial Utilization*

- A. Prior to Substantial Completion of all of the Work, DC Water may use or occupy, at DC Water's option, any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which DC Water and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by DC Water for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.
 - 1. DC Water at any time may request Contractor in writing to permit DC Water to use or occupy any such part of the Work which DC Water believes to be ready for its intended use and substantially complete. If Contractor agrees that such part of the Work is substantially complete, Contractor will certify to DC Water that such part of the Work is substantially complete and request DC Water to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after such request, the Contractor and DC Water shall make an inspection of that part of the Work to determine its status of completion. If DC Water considers that part of the Work to be substantially complete, the provisions of Paragraph 13.5 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 2. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.
 - 3. DC Water has no obligation to accept partial Substantial Completion of any Work, and DC Water's use or occupancy of any part of the Project pursuant to this Paragraph 13.6 shall in no way relieve the Contractor of any other responsibilities under the Contract Documents. If DC Water's use or occupancy delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.
- B. If DC Water's ability to use or occupy portions of the Project pursuant to Paragraph 13.5A above is dependent upon Substantial Completion of any other portion of the Project, then: (1) warranties on the portions of the Project used or occupied by DC Water, including the provisions set forth in Paragraph 12.8 above, do not begin to run until Substantial Completion of all portions of the Work upon which such portions are dependent, and (2) Substantial Completion of the whole Project shall not be deemed to be achieved until the entire Project is substantially complete.

13.7 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, DC Water will promptly make a final inspection with the Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.8 *Final Payment*

A. Application for Payment:

1. After Contractor has, in the opinion of DC Water, satisfactorily completed all corrections identified during the final inspection for the entire Work or an agreed portion thereof and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up As-Built Documents (as provided in Paragraph 6.14), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to, the evidence of insurance required by Paragraph 5.4B.6; (ii) consent of the surety, if any, to final payment; (iii) complete and legally effective releases or waivers (satisfactory to DC Water) of all Lien rights arising out of or Liens filed in connection with the Work; and (iv) a general release executed by the Contractor waiving, upon receipt of final payment by the Contractor, all Claims, except those claims specifically identified and listed in the general release that remain unsettled at the time of final payment. Consent of the surety, signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the surety.
3. In lieu of the releases or waivers of Liens specified in Paragraph 13.8A.2 and as approved by DC Water, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which DC Water or DC Water's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to DC Water to indemnify DC Water against any Lien.

B. Review of Application and Acceptance:

1. If, on the basis of DC Water's observation of the Work during construction and final inspection, and DC Water's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, DC Water is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled for the entire Work or an agreed portion thereof, DC Water will approve the Application for Payment. Otherwise, DC Water will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

2. DC Water's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 13.8A will only be to determine generally that the content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

C. Payment Becomes Due:

1. Sixty (60) days after the presentation to DC Water of the Application for Payment and accompanying documentation, the amount approved by DC Water will become due and, when due, will be paid by DC Water to Contractor.

13.9 *Waiver of Claims*

- A. The making and/or acceptance of final payment will constitute a waiver of all Claims by Contractor against DC Water other than those specifically set forth in the general release required by Paragraph 13.8A.2 (iv), which Claims shall have been previously made in writing in accordance with this Contract and which are still unsettled.

ARTICLE 14 SUSPENSION OF WORK AND TERMINATION

14.1 *DC Water May Suspend Work*

- A. At any time and without cause, DC Water may order in writing the Contractor to suspend, delay, or interrupt all or any part of the Work for such period of time as DC Water may determine to be appropriate for the convenience of DC Water. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension by seeking relief therefor in accordance with Paragraph 14.1C below.
- B. If the performance of all or any part of the Work is suspended, delayed, or interrupted for an unreasonable period of time by an act of DC Water in the administration of this Contract, or by DC Water's failure to act within the time specified in this Contract (or if no time is specified, within a reasonable period of time), an adjustment shall 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, provided, however, that no adjustment shall be allowed for any costs incurred more than 20 days before the Contractor notified DC Water in writing of the act or failure to act involved.
- C. No adjustment or claim under this Paragraph 14.1 shall be allowed 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 not later than the date of final payment under this Contract. Furthermore, no adjustment shall be made under this Paragraph 14.1 for any suspension, delay, or interruption to the extent: (i) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or (ii) for which an equitable adjustment is provided for or excluded by any other provision of this Contract.

14.2 *DC Water May Terminate For Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.6 as adjusted from time to time pursuant to Paragraph 6.3);
 2. Contractor's failure to comply with Laws or Regulations of any public body having jurisdiction;
 3. Contractor's failure to follow direction from DC Water or DC Water's Consultants; or
 4. Contractor's substantial failure to fulfill its obligations under the Contract Documents, including any material violation occurring after Substantial Completion, such as for failure in a timely manner: (a) to complete one or more punch lists; (b) to render operation and maintenance manuals or other required documentation; or (c) to perform warranty Work.
- B. If one or more of the events identified in Paragraph 14.2A occur, DC Water may give Contractor (and the surety, if any) ten (10) days written notice (delivered by certified mail, return receipt requested) of its intention to terminate for default, an opportunity for consultation, and an opportunity to cure the default. If Contractor has failed to so cure the default after such notice and consultation, then DC Water may, by giving Contractor (and the surety, if any) seven days written notice (delivered by certified mail, return receipt requested), declare the Contract terminated. In such event, DC Water may exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which DC Water has paid Contractor but which are stored elsewhere, and finish the Work as DC Water may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all claim, court or arbitration or other dispute resolution costs) sustained by DC Water arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to DC Water. No amount shall be allowed for anticipated profit on unperformed services or other work. Such claims, costs, losses, and damages incurred by DC Water will be incorporated in, as pertinent a Unilateral Change Order or a Change Order. When exercising any rights or remedies under this paragraph DC Water shall not be required to obtain the lowest price for the Work performed.
- C. Where Contractor's services have been so terminated by DC Water, the termination will not affect any rights or remedies of DC Water against Contractor then existing or which may thereafter accrue. Any retention or payment of monies due Contractor by DC Water will not release Contractor from liability.
- D. If liquidated damages are provided in the Special Provisions or elsewhere in the Contract Documents, and DC Water so terminates the Contractor's right to proceed, DC Water shall be entitled to recover liquidated damages until a reasonable time as may be required for completion of the Work together with any increased costs incurred by DC Water to complete the Work.

- E. If at any time, a termination for cause is deemed to be wrongful, it will automatically become a termination for convenience as provided in Paragraph 14.3.
- F. Upon receipt of a termination pursuant to this Article, the Contractor shall: (i) promptly discontinue all services affected (unless directed by DC Water to the contrary); and (ii) deliver or otherwise make available to DC Water all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing the Work, whether completed or in progress.

14.3 *DC Water May Terminate For Convenience*

- A. Upon ten (10) days written notice to Contractor (delivered by certified mail, return receipt requested), DC Water may, without cause and without prejudice to any other right or remedy of DC Water, elect for its convenience to terminate the Contract in whole or in part. Prior to the termination, DC Water shall give the Contractor an opportunity for consultation to discuss, among other things, DC Water's requirements associated with the termination.
- B. In the event of a termination for convenience, Contractor shall:
 - 1. Stop work as specified in the notice;
 - 2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract;
 - 3. Terminate all subcontracts to the extent they relate to the work terminated;
 - 4. Assign to DC Water, as directed by the Contracting Officer, all rights, title, and interest of the Contractor under the subcontracts terminated, in which case DC Water shall have the right to settle or to pay any termination settlement proposal arising out of those terminations; With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause;
 - 5. As directed by the Contracting Officer, transfer title and deliver to DC Water — (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to DC Water;
 - 6. Complete performance of the work not terminated;
 - 7. Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which DC Water has or may acquire an interest; and
 - 8. Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in Paragraph 14.3B.5; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by DC Water under this contract, credited to the

price or Cost of the Work, or paid in any other manner directed by the Contracting Officer.

- C. In the event of a termination for convenience, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Should the Contractor and Contracting Officer be unable to agree on the whole amount to be paid the Contractor because of the termination of work the Contractor shall be paid (without duplication of any items):
1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including a sum determined by the Contracting Officer to be fair and reasonable for overhead and profit on such Work; provided however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss;
 2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. for the costs of settling and paying claims incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; as provided in 14.3B.5 above; and
 4. for reasonable expenses directly attributable to termination.
- D. Contractor shall not be paid on account of loss of anticipated profits or revenue, unabsorbed home office overhead, or other economic loss arising out of or resulting from such termination.
- E. If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

14.4 *DC Water May Terminate for Lack of Funding*

- A. Notwithstanding any other provisions of this Contract, at the end of each DC Water fiscal year, this Contract is subject to cancellation if funding for the succeeding fiscal year is not provided. If funds to pay any amount payable hereunder are not appropriated and not otherwise made available for that purpose, this Contract shall be deemed terminated at the end of the then current fiscal year. DC Water shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date. Cancellation of the Contract under the terms of this Section will not be interpreted to be "Termination for Convenience" per Paragraph 14.3.

14.5 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, the Work is suspended for more than 90 consecutive days by DC Water or under an order of court or other public authority, then Contractor may, upon seven (7) days written notice to DC Water and provided DC Water does not remedy such suspension or failure within that time, terminate the Contract.
- B. Contractor shall have the right to terminate the Contract in whole or in part in the event of a substantial failure by DC Water to fulfill its obligations under this Contract. No such termination may be effected unless the Contractor gives DC Water ten (10) days written notice (delivered by certified mail, return receipt requested) of its intention to terminate for default and an opportunity for consultation. If DC Water has failed to cure the substantial failure after such notice and consultation within a reasonable period of time, then the Contractor may declare the Contract terminated by giving DC Water seven days written notice (delivered by certified mail, return receipt requested).
- C. For terminations under this Paragraph 14.5, Contractor may recover from DC Water payment on the same terms as provided in Paragraph 14.3.

14.6 *Contractor Responsibility under Any Termination by DC Water*

- A. Upon receipt of a termination pursuant to Paragraphs 14.2 or 14.3, the Contractor shall: (i) promptly discontinue all services effected (unless directed by DC Water to the contrary); and (ii) deliver or otherwise make available to DC Water all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing the Work, whether completed or in progress.

ARTICLE 15 DISPUTE RESOLUTION

15.1 *Notice to DC Water*

- A. Unless an earlier time is required under the Contract Documents, written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the Contractor to DC Water promptly (but in no event later than 30 days) after the Contractor knew or had reason to know of the start of the event giving rise to the Claim, dispute, or other matter. A detailed description of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to DC Water within 60 days after the Contractor knew or had reason to know of the start of such event (unless DC Water allows additional time for the Contractor to submit additional or more accurate data in support of such Claim, dispute, or other matter). Claims for adjustment in Contract Price and Contract Times shall be prepared in accordance with the pertinent provisions of ARTICLE 11. Each Claim shall be accompanied by the Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.
- B. The provisions of this Paragraph 15.1 shall be held and taken to constitute a condition precedent to the right of the Contractor to recover. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 15.1.

15.2 *Resolution of Claims*

- A. *DC Water's Response to Claim:* DC Water will endeavor to provide a written response to Contractor within 30 days after DC Water's receipt of the detailed description of the amount or extent of the Claim and supporting data required under Paragraph 15.1A. If DC Water disagrees with Contractor's contentions, the parties shall make good faith efforts to resolve such disagreements. Notwithstanding anything to the contrary in the Contract

Documents, at all times Contractor shall continue with the Work as directed, in a diligent manner and without delay, shall conform to DC Water's decisions or orders, and shall be governed by all pertinent provisions of the Contract Documents.

- B. *Contracting Officer's Final Decision.* If a Claim has not been resolved through direct, informal negotiations, then, upon a written request from Contractor, DC Water's Contracting Officer, or his/her designee (other than personnel assigned to the Project), shall review the Claim and issue his/her determination of the Claim ("Contracting Officer's Final Decision"), in accordance with the following:
1. Contractor's Claim shall be in writing, shall be delivered in person or mailed by certified mail, return receipt requested to the Contracting Officer, and shall contain at least the following:
 - a. A description of the Claim and the amount in dispute.
 - b. Any data or other information in support of the Claim.
 - c. Contractor's request for relief. A description of the Claim and the amount in dispute.
 - d. The certification(s) required by Paragraph 15.3 below.
 2. An informal hearing may be conducted on the Claim, in accordance with processes established by the Contracting Officer. The Contracting Officer, or his/her designee, may conduct the informal hearing. If the Contracting Officer determines that an informal hearing is necessary, the informal hearing shall be conducted as soon as practicable after the Claim has been received.
 3. The Contracting Officer's Final Decision shall be issued in writing within sixty (60) days of the date of the request for review, or if an informal hearing is held, within sixty (60) days of the informal hearing.
 4. If Contractor disagrees with the Contracting Officer's Final Decision, or if the Contracting Officer fails to issue a Contracting Officer's Final Decision within the 60-day period, then Contractor shall have the right to proceed in accordance with Paragraph 15.2C below. If Contractor fails to exercise its right to proceed in accordance with Paragraph 15.2C below within thirty (30) days after the Contracting Officer's Final Decision, then it shall be deemed to have accepted such Contracting Officer's Final Decision and shall have waived its rights for any further relief for the matters covered by such Contracting Officer's Final Decision.
 5. A Contracting Officer's Final Decision is a condition precedent to the initiation of litigation under Paragraph 15.2C below.
- C. *Appeal of the Final Decision of Contracting Officer.* The Contracting Officer's Final Decision shall be final and binding upon the Contractor unless Contractor initiates litigation against DC Water in the courts of the District of Columbia within thirty (30) days of the final decision.
- D. *Exclusive Jurisdiction.* Except as otherwise provided by applicable law, and notwithstanding any other provision contained in the Contract Documents to the contrary, the District of Columbia courts will have exclusive jurisdiction over any Claim, dispute, or other matter between DC Water and Contractor arising out of or related to this Contract or Project.

15.3 *Certifications*

- A. *Obligation to Certify.* Contractor, under penalty of perjury, shall furnish, contemporaneously with each submission under Paragraph 15.2B.1, a certification by Contractor and its Subcontractor(s), as pertinent with the following:
1. The submission is made in good faith;
 2. Supporting data are accurate and complete to the best of Contractor's and Subcontractors' knowledge and belief; and
 3. The adjustment to Contract Price and/or Contract Times requested accurately reflects the adjustment for which Contractor believes DC Water is liable.
- B. *Execution of Certification.* An individual or officer who is authorized to act on Contractor's behalf shall execute the certification.
- C. *Review of Subcontractor Submissions.* In regard to a submission by a Subcontractor, Contractor shall fully review the Subcontractor's submission and shall certify such submission, or such relevant portion(s) of such submission, under penalty of perjury, in the same manner the Contractor would certify its own submission. DC Water will not consider a direct claim by any Subcontractor.
- D. *Failure to Furnish Certifications.* Contractor hereby agrees that failure to furnish certifications as required in this Paragraph 15.3 shall constitute a waiver by the Contractor as to the subject matter of the requested relief.
- E. *False Claims.* Contractor further acknowledges and agrees that if it submits a false claim, on behalf of itself or a Subcontractor, Contractor, in addition to any sanctions contained in these General Conditions, may be subject to civil penalties, damages, debarment, and criminal prosecution in accordance with pertinent Laws and Regulations. Contractor shall be liable to DC Water and shall pay it for the actual costs incurred by DC Water in investigating, analyzing, negotiating or resolving any claim, or unsupported part of claim, for costs or damages submitted by the Contractor which is determined to be false or to have no basis in law or in fact.

15.4 *Miscellaneous*

- A. DC Water shall have no liability to the Contractor for any claim of a Subcontractor or Supplier against the Contractor if the Contractor has no liability therefor to the Subcontractor or Supplier or if the Contractor has a valid defense against the claim of the Subcontractor or Supplier. Any agreement between the Contractor and the Subcontractor or Supplier making liability on the part of the Contractor to the Subcontractor or Supplier contingent upon a determination of liability on the part of DC Water to the Contractor shall not make DC Water liable to the Contractor for the claim of the Subcontractor or Supplier if the Contractor would not otherwise be liable therefor. The purpose of this paragraph is to adopt the *Severin Doctrine* (*Severin v. United States Court of Claims*, 99 Cl. 435 (1943)), without exception, as a matter of contract between DC Water and the Contractor.
- B. Notwithstanding any other provision of the Contract Documents, if Contractor contends that any directive, Unilateral Change Order, Change Order, Written Amendment, or any other action, inaction or event will or may cause an increase in the Contract Price, Contract Times, or damages or costs to the Contractor or its Subcontractors or Suppliers at any tier, Contractor must include the additional time and compensation claimed to be due in accordance with ARTICLE 11 and Paragraph 15.1. Contractor may not unilaterally "reserve its rights" to file any claims or any requests for an increase in the Contract Times or Contract Price.

ARTICLE 16 MISCELLANEOUS

16.1 *Giving Notice*

- A. Written notice shall be deemed to have been duly served on the Contractor if delivered in person to the individual or to a member of the firm or to an office of the corporation to whom it is directed, or if delivered or sent by regular or certified mail, facsimile transmission or Electronic Transmission with notice of receipt to the last business address, facsimile number, or email known to DC Water. Written notice shall be deemed to have been given to DC Water upon actual receipt of written notice by DC Water.

16.2 *Information Technology*

- A. The Contractor and its Subcontractors or Suppliers at any tier shall, in their use of DC Water information systems, conform to DC Water's Information Technology Policies and Procedures. These policies define the rules of behavior and procedures that apply to users of DC Water information systems and resources.
- B. The Contractor shall not use proprietary software unless its planned use has been disclosed to and approved by DC Water before execution of this Contract. The Contractor shall provide DC Water with license(s) to use the approved proprietary software, if any.

16.3 *Data Use & Privacy*

- A. The Contractor shall use and access data shared or collected under the Contract for no purpose other than for the Work described herein. Nothing in the Contract shall be construed to authorize Contractor to have access to DC Water data beyond that included in the scope of the Contract, or to permit access to such data by entities other than the Contractor. Contractor agrees to immediately notify DC Water if it becomes aware that data shared under this Contract has been used for a purpose outside the scope of this Contract. Contractor understands that the Contract does not convey ownership of DC Water data to Contractor.
- B. Contractor will not disclose data produced to them or collected under the Contract in any manner that could identify any individual to any entity other than DC Water, or the Contractor's authorized employees, contractors, and agents affiliated with Contractor and who have legitimate interests (i.e. to those who are performing the Work and need the information for that purpose).
- C. Contractor will put procedures in place to safeguard the confidentiality and integrity of personal data disclosed or collected, to place limitations on its use and to maintain compliance with applicable privacy laws, including storing, maintaining, and transferring the data only as described in the Contract Documents. Contractor shall employ good industry practices, both technically and procedurally, to protect all data shared or collected under this Contract from unauthorized physical and electronic access.
- D. Contractor shall require all affiliated employees, contractors, subcontractors and agents of any kind participating in the Work to comply with the Contract and all applicable laws with respect to the data and information shared under the Contract.
- E. Upon completion of the Work, the Contractor shall return to DC Water any data shared, collected or produced under this Contract and shall destroy all other copies of such data.

16.4 *Publication and Dissemination of Work*

- A. The Contractor shall obtain written consent from DC Water before it publishes or disseminates any work performed under this Contract or publishes or disseminates any communications, documents or data utilized in the work performed under this Contract.

This consent shall not be required for routine, unpublished communication of work descriptions and experience for commercial purposes.

16.5 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the pertinent jurisdiction, the deadline shall be extended to the next working day.

16.6 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.
- B. DC Water shall not be precluded or stopped by any measurement, estimate, Unilateral Change Order, Change Order, Work Change Directive, Written Amendment, Contract modification, certificate of payment, or payment from showing the true amount and character of the Work furnished by the Contractor, or from showing that any measurement, estimate, Unilateral Change Order, Change Order, Work Change Directive, Written Amendment, Contract modification, certificate of payment, or payment is untrue or was incorrectly made, or from showing that the Work does not in fact conform to the Contract Documents. DC Water may recover from the Contractor or any surety, or both, such damages, loss, or additional expense incurred as a result of any such error in measurement, estimate, Unilateral Change Order, Change Order, Work Change Directive, Written Amendment, Contract modification, certificate of payment, or payment as a result of such failure to conform to the Contract Documents. DC Water's rights in this respect shall not be waived or barred by any test, inspection, acceptance or approval of the Work, or by payment therefor, or by granting an extension of time, or by taking possession, or by execution of a Change Order or Written Amendment based on the erroneous measurement, estimate, Unilateral Change Order, Change Order, Work Change Directive, Written Amendment, Contract modification, certificate of payment, or payment.
- C. The waiver by DC Water of any breach of any provision of the Contract Documents shall not operate as a waiver of any other subsequent breach.
- D. DC Water and Contractor agree to waive all claims against each other for any consequential damages that may arise out of or relate to the Contract Documents or the Project. DC Water's waiver includes, but is not limited to, DC Water's loss of use of the Project, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to the Project, or loss of reputation. Contractor's waiver includes, but is not limited to, loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity or loss of reputation. The provisions of this Paragraph 16.6D shall also apply in the event of termination of this Contract and shall survive such termination. The provisions of this Paragraph 16.6D shall not be deemed to affect the imposition of liquidated damages in accordance with the Contract Documents, which by their nature may be deemed to compensate DC Water for damages that might be considered consequential. Notwithstanding the above, the waivers contained in this Paragraph 16.6D

shall not apply in the event Contractor has violated any Federal Requirements and Contract Provisions and is, as a result, liable for consequential damages pursuant to the terms of such Federal Requirements and Contract Provisions.

- E. The making of final payment by DC Water shall not be construed to affect, or constitute a waiver, of any rights or claims that DC Water may have against the Contractor or any surety arising out of or related to this Contract or any Bond.

16.7 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract.

16.8 *Controlling Law*

- A. This Contract is to be governed by the law of the District of Columbia.

16.9 *Retention of Records*

- A. Unless otherwise provided in the Contract or by applicable statute, Contractor and its Subcontractors and Suppliers at any tier, from the effective date of Contract completion and for a period of three years after final settlement under the Contract (including the final resolution of any outstanding Claim), or by the applicable statute of limitations, whichever is longer, shall preserve and make available to DC Water at all reasonable times at the office of Contractor, but without direct charge to DC Water, all books, records, documents, and other evidence bearing on the costs and expenses of Contractor and its Subcontractors and Suppliers under the Contract.
- B. If Contractor or its Subcontractors or Suppliers at any tier fail to retain for the period of time required by Paragraph 16.9A original documents used, made, or relating to the preparation or calculation of Contractor's Bid to DC Water or of bids, quotes or estimates of subcontractors or suppliers at any tier, Contractor shall be entitled to no damages, compensation, or equitable adjustments (including extensions of the Contract Times) for any Claims based on calculations, assumptions, understandings, or beliefs allegedly made at the time of preparation of such bids, quotes, or estimates.

16.10 *Contract Issues*

- A. Terms used in the Contract, which are defined in ARTICLE 1 of these General Conditions, will have the meanings indicated in these General Conditions.
- B. No assignment by a party here to of any rights under or interests in the Contract shall be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- C. DC Water and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- D. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall

continue to be valid and binding upon DC Water and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

16.11 *Anti -Deficiency Acts*

- A. The obligations of DC Water to fulfill financial obligations pursuant to this Contract (including any indemnity obligation) are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351, 1511-1519 (2004), and, to the extent applicable, D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08 (2006 Repl.) ((i) and (ii) collectively, as amended from time to time, the “Anti-Deficiency Acts”); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code §§ 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Contract shall create an obligation of DC Water in anticipation of an appropriation by Congress for such purpose, and DC Water legal liability for the payment of any amounts under this Contract shall not arise or obtain in advance of the lawful availability of funds for such purpose. No DC Water official or employee is authorized to obligate or expend any amount under this Contract unless such amount has been appropriated by act of Congress or is otherwise lawfully available. This Contract is subject to termination by DC Water at any time if sufficient appropriations are not made available by act of Congress; provided, however, that the determination of whether sufficient appropriations are available shall be made by DC Water in its sole discretion.

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