

**SAMPLE/DRAFT AGREEMENT DOCUMENTS**

**FOR**

**WEST COAST INLAND NAVIGATION DISTRICT  
DISTRICT HEADQUARTERS FACILITY**

**CONTRACT NO. 2024-\_\_\_\_**

**WITH**

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**AGREEMENT**

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## AGREEMENT

**This Agreement**, made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **West Coast Inland Navigation District**, an independent multi-county special tax district of the State of Florida (“WCIND”) and \_\_\_\_\_, (“Contractor”) a Florida corporation that is registered and authorized to do business in the State of Florida, with respect to that certain Project consisting of the Work to be performed in accordance with the Agreement, Supplementary Conditions, General Conditions, Request for Qualifications (RFQ) documents, Bid Price Form, Specifications, Drawings and all issued Addenda for the District Headquarters Facility Project.

### W I T N E S S E T H:

WCIND and the Contractor in consideration of the mutual covenants and obligations contained herein, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, agree as follows:

#### 1. **Work**

- a. The Contractor shall perform all of the Work in accordance with the Agreement Documents (as that term is defined in the General Conditions which are attached to and made a part of this Agreement).
- b. Contractor shall perform the Work in accordance with generally accepted construction practice under the same or similar circumstances at the same time and in the same locality. Contractor shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Work as required by this Agreement and the Agreement Documents.
- c. The responsibility to provide the construction means, methods, techniques, sequences and procedures shall include, but not be limited to, the obligation of the Contractor to provide the following construction requirements, as applicable: temporary power and light; temporary offices and construction trailers; required design certifications; required approvals; weather protection; site clean-up and housekeeping; construction trade management; temporary parking; a construction safety plan; safety and first aid facilities; correction of or compensation for defective work or equipment; Subcontractors’ insurance certificates; storage areas; workshops and warehouses; temporary fire protection; site security; temporary Utilities; including without limitations; potable water and water for use in performing the Work (in all cases, including a backflow preventer meeting ANSI A40.6); phone; sanitary; gas or fuel; Subcontractor and Supplier qualification; equipment and materials procurement and expediting; receipt and unloading and proper storage of delivered materials and equipment; erection rigging; temporary supports; submittal and shop drawings review and orderly filing system; construction and procurement critical path scheduling; construction coordination; and cooperation with WCIND in implementation of WCIND’s owner’s direct purchase sales tax savings program.
- d. During the progress of the Work, Contractor shall at all times during normal working hours afford WCIND, the Owner Representative, and Architect/Engineer every reasonable opportunity for observing all Work. During any such observation, all representatives of WCIND, the Owner Representative, and Architect/Engineer shall comply with all safety and other rules and regulations applicable to presence in or at the Work site.
- e. Contractor shall have full responsibility, to the extent applicable, for locating all underground Utilities in advance of excavation; scheduling excavation and uncovering in advance, unless it conflicts with Work already uncovered; shoring, blocking, and protecting underground

- Utilities; repairing any damage done to the satisfaction of WCIND and the Owner Representative and the owners of those underground Utilities; promptly notifying WCIND and the Owner Representative of any newly discovered underground Utility; and the safety, protection and repairing of any damage done to any affected Work. All costs involved and time required to perform these responsibilities shall be considered as having been included in the Agreement Price.
- f. Contractor shall use care and diligence, and shall take all appropriate precautions, to protect the Work and the Work site and the property of other persons (including any materials, equipment, or other items furnished by WCIND) from damage due to the nature of the Work, the natural elements, carelessness of others, and from any cause, until final completion of the Work; and for such purpose, Contractor shall provide fencing, protective features (such as tarpaulins, boards, boxing, frames, canvas guards, and fireproofing), and other safeguards to the extent Contractor reasonably determines such are necessary and proper in the performance of the Work.
  - g. Contractor shall ensure that each employee, representative, Subcontractor, Supplier, and others acting for the Contractor use designated access roads and parking areas. Contractor shall employ watchmen on the Work site when necessary and shall also erect and maintain such strong and suitable barriers and such lights as shall effectively prevent the happening of any accident to health or to property or to any partially completed Work or to any materials stored on or adjacent to the Work site. Contractor shall employ any additional temporary fencing and gates to adequately protect the Work.
  - h. Stored materials shall be kept in a neat and orderly manner. Materials that are subject to deterioration by exposure to the sun, rain or other elements shall be kept adequately covered and protected. Contractor shall be responsible for protecting all stored materials and the Work site safe from theft and vandalism.
  - i. All costs involved and time required to perform these responsibilities shall be considered as having been included in the Agreement Price.
  - j. Contractor shall notify owners of adjacent property (including underground Utility owners) not less than forty-eight (48) hours, or the time period required by Laws and Regulations, whichever period is longer, prior to commencing the Work, and shall coordinate and cooperate with them in the location, protection, removal, relocation, and/or replacement of their property. At least five (5) days prior to providing such notice to adjacent property owners, Contractor shall submit its proposed written notice to WCIND for review and approval.
  - k. All damage, injury or loss to property caused, directly or indirectly, in whole or part, by Contractor, any Subcontractor or Supplier or anyone for whose acts any of them may be liable, shall be remedied at Contractor's expense, which shall be considered to have been included in the Agreement Price.
  - l. In case of damage or destruction to the Work, the Work site or adjacent properties resulting from any cause, and regardless of the extent thereof or the estimated cost of repair, replacement or restoration, and whether or not any insurance proceeds are sufficient or available for the purpose, Contractor shall immediately undertake and complete the repair, replacement and restoration of the damage or destruction to the character and condition existing immediately prior to the damage or destruction, all at Contractor's sole cost and expense, which shall be considered to have been included in the Agreement Price, except in the event that such damage or destruction is caused by WCIND, its employees, agents, representatives, including the Owner Representative or Architect/Engineer, or is the result of an Uncontrollable Circumstance.
  - m. Contractor shall notify WCIND immediately of any damage or destruction to the Work, the Work site or any adjacent properties including, but not limited to, hazardous substance spills,

damage to sensitive areas, permit or approval violations, fires and injuries. Additionally, Contractor shall notify the required Insurance carriers and Sureties of any damage or destruction to the Work, the Work site, or adjacent properties, or any accidents on the Work site, as promptly as possible after Contractor learns of any such damage, destruction or accidents. As soon as practicable after learning of any such occurrence, Contractor shall submit a full and complete written report to WCIND.

- n. In case of an emergency which threatens loss or injury to persons or property, Contractor shall take appropriate remedial action, without previous instructions from WCIND the Owner Representative, as the situation may warrant, and shall immediately provide Notice to WCIND and the Field Representative of its action. Any claim for compensation by Contractor, together with substantiating documentation in regard to expense caused by emergency acts, shall be submitted to WCIND and the amount of compensation if any, shall be determined by mutual agreement, subject to cost substantiation.

## 2. Agreement Time

- a. WCIND and the Contractor recognize that time is of the essence with respect to Contractor's performance of its obligation under the Agreement Documents, and WCIND shall suffer financial loss if Substantial Completion and Final Completion of the Work is not achieved within the Agreement Time specified in paragraph 2.a. below. Accordingly, if the Contractor fails to achieve Substantial Completion and Final Completion of the Work within the Agreement Time, it shall pay WCIND Liquidated Damages in accordance with the terms stated below in *Article III, Liquidated Damages*.
- b. The Contractor shall commence the Work within ten (10) days after the date specified for the commencement of the Work in the Notice to Proceed and shall complete all Work hereunder as follows:
  - i. All facilities shall be operational to provide WCIND at its option the full time use of the Project as intended by the Agreement Documents and the Contractor shall perform the Work to achieve Substantial Completion within \_\_\_\_\_ (\_\_\_\_) days of issuance of Notice to Proceed as the commencement date of the Agreement Time.
  - ii. The Contractor shall perform the Work to achieve Final Completion within \_\_\_\_\_ (\_\_\_\_) days of issuance of Notice to Proceed as the date of commencement of the Agreement Time.
- c. The completion deadlines in this Article 2 are subject to adjustment in accordance with the General Conditions.

## 3. Liquidated Damages

If the Contractor fails to achieve Substantial Completion of the Work within the Agreement Time, as said time period may be adjusted pursuant to the terms of the Agreement Documents, Contractor shall pay WCIND Liquidated Damages in accordance with the following:

- a. The Contractor shall pay WCIND as Liquidated Damages, and not as a penalty, the amount of One Thousand Dollars and No Cents (\$1,000.00) for each day that expires after the Agreement Time specified above in paragraph 2.a for Substantial Completion. These Liquidated Damages are WCIND's sole and exclusive Substantial Completion delay related damages and represent a reasonable estimate of WCIND's damages in the event Substantial Completion of the Work is delayed. The Contractor agrees that these Substantial Completion Liquidated Damages do not constitute a penalty or forfeiture.
- b. The Contractor shall pay WCIND as Liquidated Damages and not as a penalty, the amount of Five Hundred Dollars and No Cents (\$500.00) for each day that expires after the time specified in Paragraph 2.b for Final Completion. These Liquidated Damages are WCIND's

sole and exclusive Final Completion delay related damages and represent a reasonable estimate of WCIND’s damages in the event Final Completion of the Work is delayed. The Contractor agrees that these Final Completion Liquidated Damages do not constitute a penalty or forfeiture. Also, Contractor agrees these Final Completion Liquidated Damages are in addition to, and not duplicative of, the Substantial Completion Liquidated Damages noted in Paragraph 3.a above.

**4. Agreement Price**

- a. WCIND hereby agrees to pay to the Contractor in lawful money of the United States for the faithful performance of all of the Contractor’s obligations under the Agreement Documents, and the Contractor agrees to accept in full payment the Agreement Price of: \_\_\_\_\_ Dollars and \_\_\_\_ Cents (\$\_\_\_\_\_), inclusive of an Owner’s Allowance (\$\_\_\_\_\_) and Indemnification (\$100.00) subject to the conditions governing payments to the Contractor in the Agreement Documents. If the Agreement Price includes any Unit Price amounts and the actual quantity of Unit Price items installed is different than the estimated quantity, then the Agreement Price shall be adjusted in accordance with the Agreement Documents. The Agreement Price includes, if applicable, only those Alternates accepted by WCIND, as identified in paragraph 4.c below. The Agreement Price includes, if applicable, only those Allowances established by WCIND, as identified in paragraph 4.d below.
- b. The Unit Prices and associated estimated quantities included within the Agreement Price are attached hereto and made a part hereof as Schedule A.
- c. The following Bid Options have been accepted by WCIND and are included within the Agreement Price:

ALTERNATE	Price
Not Applicable _____	N/A _____

- d. The following Allowances have been established by WCIND and are included within the Agreement Price:

ALLOWANCE	Price
Owner’s Allowance _____	\$ _____
Indemnification _____	\$ 100.00 _____

- e. Payment of Allowances shall only be authorized by issuance of Change Authorization signed by WCIND in accordance with Section 7.2.1 of the General Conditions.

**5. Payment**

- a. Payment procedures are outlined in the General Conditions, Article VII Payment. All monies not paid when due shall bear interest at a rate not to exceed the interest rate allowed by law to be paid by governmental entities in Florida, provided that this does not exceed six percent (6%) per year simple interest.
- b. WCIND’s payment to Contractor of any progress or final payment shall not release the Contractor of any liability and shall not be deemed evidence of performance or be construed

as an acceptance of defective or improper Work, or Work that does not comply with the requirements of the Agreement Documents.

## 6. Miscellaneous

- a. All Agreement Documents are hereby incorporated into and made a part of this Agreement by this reference. The Agreement Documents may only be amended, modified, or supplemented as provided in the Agreement Documents. The Agreement Documents represent the final and entire integrated Agreement between the parties with respect to the Work. The Agreement Documents supersede all prior oral or written Agreements, if any, between the parties, and any statement, representation, promise or inducement not set forth in the Agreement Documents is null and void and not binding on WCIND or the Contractor. Except for the warranty and third-party beneficiary rights of WCIND set forth herein, the Agreement Documents shall not in any way create a relationship of any kind between the Architect/Engineer and the Contractor or between WCIND and a Subcontractor or Supplier, or between WCIND and any other person. If any provision(s) of the Agreement Document is/are invalid, illegal, or unenforceable such provision(s) shall be considered divisible, and all other provisions of the Agreement Documents shall nevertheless remain in full force and effect.
- b. The Contractor shall not sell, assign, transfer or otherwise convey any of its rights and shall not delegate any of its duties under the Agreement Documents without the prior and expressed written consent of WCIND and the Surety. Any attempted sale, assignment, transfer, conveyance or delegation of the Contractor's rights under this Agreement or the other Agreement Documents in violation of the terms of this paragraph shall be void and shall relieve WCIND of any further liability under the Agreement Documents but shall not relieve the Contractor or the Contractor's Surety(ies) of any liability. If WCIND consents in writing to an assignment, unless specifically stated to the contrary in the consent, the assignment shall not release or discharge the Contractor from any duty, responsibility or obligation set forth in the Agreement Documents, and shall not release or discharge the Surety(ies) under the bonds required by the Agreement Documents.
- c. This Agreement shall be binding on WCIND, the Contractor, and all of their respective successors, heirs, legal representatives and, if WCIND has consented to an assignment or delegation as provided in the previous paragraph, assigns and delegates.
- d. Any waiver by WCIND of any provision of the Agreement Documents must be specific and in writing and shall apply only to the particular matter concerned and not to other similar or dissimilar matters. Any waiver of any breach of the Agreement Documents shall not be held to be a waiver of any other or subsequent breach. Neither the failure of WCIND to exercise any power given to WCIND under the Agreement Documents or to insist upon compliance by the Contractor with Contractor's obligations under the Agreement Documents, nor any custom or practice of WCIND and Contractor at variance with the terms of the Agreement Documents, shall constitute a waiver of WCIND's right to demand full and complete compliance by the Contractor with the terms and provisions of the Agreement Documents.
- e. Nothing contained in the Agreement Documents shall in any manner authorize, empower or constitute the Contractor, its Subcontractors or Suppliers as agent(s) of WCIND; authorize or empower the Contractor, its Subcontractors or Suppliers to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of WCIND; or authorize or empower the Contractor, its Subcontractors or Suppliers to bind WCIND in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of WCIND. The Contractor shall perform all Work under the Agreement Documents as an independent contractor. This Agreement does not create, and

- shall not be construed as creating, any rights enforceable by any person not a party to the Agreement.
- f. This Agreement and the Agreement Documents shall be governed by and construed in accordance with the Laws and Regulations of the State of Florida without giving effect to any rules governing conflict of laws.
  - g. The parties agree that for any litigation arising under the Agreement Documents, venue shall be only in the state courts in and for Sarasota County, Florida.
  - h. All documents prepared or produced by Contractor or any of its Subcontractors pursuant to this Agreement are the property of and belong to WCIND, provided that Contractor is allowed to reuse such documents with the approval of WCIND. If Contractor claims that any such document is proprietary or protected by trade secret or otherwise, Contractor has the burden to establish the basis of any such protection but until judicially declared otherwise, WCIND shall have all rights of ownership and use of such documents.
  - i. In no event shall WCIND be liable to Contractor, nor shall Contractor be liable to WCIND, for any incidental, consequential, or punitive damages based upon claims arising out of or in connection with the performance or non-performance of a party's obligations under this Agreement, or the material inaccuracy of any representation made by a party in this Agreement, whether such claims are based upon Agreement, tort, negligence, warranty or other legal theory. Contractor acknowledges and agrees, however, that claims, which are brought by third parties against WCIND and for which, but for the application of this paragraph, Contractor would otherwise have an indemnification obligation under this Agreement, shall not be considered consequential damages under this paragraph.
  - j. All express representations, indemnifications, or limitations of liability made in or given in this Agreement will survive its completion or termination for any reason.
  - k. To the extent permitted by applicable law, contractor and WCIND hereby acknowledge and agree that any and all claims arising out of, connected with, or relating to this agreement or the relationship created hereby are matters which, if adjudicated, should be adjudicated by a court without a jury. Therefore, the parties hereby waive a trial by a jury. Neither WCIND nor contractor or any successor thereof shall seek a trial by jury in any action or proceeding (whether at law or in equity, whether direct or collateral, whether in Agreement or in tort) arising out of or related to this agreement or the relationship created hereby. Neither WCIND nor Contractor shall seek to consolidate any action or proceeding in which trial by jury has been waived with any other action or proceeding in which a jury trial cannot be or has not been waived. The provisions of this paragraph cannot be and have not been waived. The provisions of this paragraph have been fully discussed by the parties and their respective attorneys and the provisions hereof shall be subject to no exceptions. WCIND and contractor acknowledge and agree that no one, including, without limitation, WCIND's agents or contractors, has represented that the provisions of this paragraph or of any other paragraph of this Agreement will not be fully enforced.
  - L. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement and that Contractor has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

## 7. **Public Records and Audit Rights**

Contractor agrees to comply with Florida's public records law by keeping and maintaining public records that ordinarily and necessarily would be required by WCIND in order to perform the services under the Agreement by doing the following: upon the request of WCIND's Custodian



of Public Records, providing WCIND with copies of or access to public records on the same terms and conditions that WCIND would provide the records and at a cost that does not exceed the cost provided by Florida law; by ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if Contractor does not transfer the records to WCIND; and upon completion of this Agreement by transferring, at no cost, to WCIND all public records in possession of Contractor or by keeping and maintaining all public records required by WCIND to perform the services. If Contractor transfers all public records to WCIND upon completion of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to WCIND, upon request from WCIND's Custodian of Public Records, in a format that is compatible with the information technology systems of WCIND.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT WCIND'S CUSTODIAN OF PUBLIC RECORDS, JUSTIN MCBRIDE, EXECUTIVE DIRECTOR, AT 200 E. MIAMI AVENUE, VENICE, FLORIDA 34285, (941) 485-9402, JUSTIN@WCIND.NET.**

**8. Definitions**

Defined terms used in this Agreement have the intent and meanings assigned to them in the General Conditions, *Article I, Definitions*.

**9. Owner Representative/Project Manager**

WCIND has retained the firm of Kimley Horn & Associates, Inc. to act as the Owner Representative/Project Manager.

**10. Public Entity Crime Statement**

Contractor has a continuous duty to disclose to WCIND if Contractor or any of its affiliates, as defined by Section 287.133,(1)(a), Fla. Stat., are placed on the convicted vendor list. Pursuant to Section 287.133(2)(a), Fla. Stat.: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or rely on a contract to provide any goods or services to a public entity;[...] may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list."

**11. Discrimination**

Pursuant to Subsection 287.134(2)(a), Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity;







**13. Scrutinized Companies and Foreign Countries of Concern**

- a. Scrutinized Companies. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to Section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with WCIND for goods or services of any amount may be terminated at the option of WCIND if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel.
- b. Foreign Countries of Concern. Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires the following: "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a 'foreign country of concern' if such interest, contract, grant or gift received from a 'foreign country of concern' if such interest, contract, grant or gift has a value of \$50,000 or more and such 4 of 5 interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable 'foreign country of concern' and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services." Pursuant to Section 268.101(7), Florida Statutes, "In addition to any fine assessed under [Section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

**14. E-Verify**

Pursuant to Section 448.095, Florida Statutes, Contractor and any subcontractor thereof shall comply with all federal immigration laws and regulations that relate to their employees including, but not limited to, registering with and using the E-Verify system. If Contractor enters into a contract with a subcontractor, the subcontractor must provide an affidavit to Contractor that states that the subcontractor does not employ any unauthorized alien in

Florida or the United States. Contractor shall provide and maintain proof of compliance with this statute upon request. Notwithstanding, if WCIND has a good faith belief that Contractor has knowingly hired, recruited, or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, WCIND shall terminate this Agreement. If WCIND has a good faith belief that a subcontractor performing work under this Agreement knowingly hired, recruited, or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, WCIND shall promptly notify Contractor and order Contractor to immediately terminate the contract with the subcontractor. Contractor shall be liable for any additional costs incurred by WCIND as a result of the termination of this Agreement based on Contractor's failure to comply with the E-Verify requirements referenced herein.

**IN WITNESS WHEREOF**, WCIND and Contractor have signed two (2) copies of this Agreement, and all parts of the Agreement Documents have been identified by Owner and Contractor. This Agreement will be effective on \_\_\_\_\_, 20\_\_ (which is the Effective Date of the Agreement).

This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

**ATTEST**

**WCIND**

\_\_\_\_\_  
**Justin McBride, Executive Director**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Its: Chair** \_\_\_\_\_

**Date:** \_\_\_\_\_

Approved as to form:

(SEAL)

\_\_\_\_\_  
General Counsel

[insert name]  
(CONTRACTOR)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(CORPORATE SEAL)

**Address for giving notice to:**

**WCIND**

200 E. Miami Ave.  
Venice, Florida 34285

**The Project Manager:  
Kimley Horn & Associates, Inc.**

Attn: Jeff Goodwin  
1800 2<sup>nd</sup> St, Suite 900  
Sarasota, FL 34231

**The CONTRACTOR:**

**[insert name]**

Address



**CONTRACTOR**  
**CERTIFICATE OF INSURANCE FORM**

<b>WCIND, AN INDEPENDENT MULTI-COUNTY SPECIAL TAX DISTRICT OF THE STATE OF FLORIDA CERTIFICATE OF INSURANCE FORM or APPROVED ACORD FORM</b>		Issue Date: _____
Producer:	CANCELLATION: Should any of the below described policies be cancelled, non-renewed or adversely changed before the expiration date thereof, the issuing company will provide 30 days written notice to WCIND by certified mail.	
	Re: Project/Contract Number: _____	
Insured:	COMPANIES AFFORDING COVERAGE	BEST RATING/CLASS
	A.	
	B.	
	C.	
	D.	
	E.	

COVERAGES: This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated.

Company Letter	15. TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS ALL LIMITS IN THOUSANDS		
	<b>16. GENERAL LIABILITY</b> <input type="checkbox"/> Commercial Form <input type="checkbox"/> Occurrence <input type="checkbox"/> Claims Made <input type="checkbox"/> Comprehensive Form <input type="checkbox"/> Premises-Operations <input type="checkbox"/> Explosion, Collapse, Underground Hazard <input type="checkbox"/> Products/Completed Operations Hazard <input type="checkbox"/> Contractual Insurance <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Independent Contractor <input type="checkbox"/> Personal Injury					EACH OCCURRENCE	AGGREGATE
					BI & PD Combined	\$	\$
					Bodily Injury	\$	\$
					Property Damage	\$	\$
					Products Comp/OP	\$	\$
					Personal & Adv. Injury	\$	\$
					* Separate Project Agg. For WCIND		\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Combined Single Limit		
					Bodily Injury (Per Person)		
					Bodily Injury (Per Accident)		
					Property Damage		
	<b>UMBRELLA/EXCESS LIABILITY</b> <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Excess Form <input type="checkbox"/> Following Form Coverage				Each Occurrence		
					Aggregate		
	<b>WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY</b>				<input checked="" type="checkbox"/> Statutory Coverage Limit	\$	
					EL Each Accident	\$	
					EL Disease – Policy Limit	\$	
					EL Disease – Each Employee	\$	
	<b>PROFESSIONAL LIABILITY</b> <input type="checkbox"/> Claims Made      <input type="checkbox"/> Occurrences Retro Date _____				\$	\$	
	<b>BUILDER'S RISK</b> <input type="checkbox"/> All Risk      <input type="checkbox"/> Permission to Occupy <input type="checkbox"/> All Owners', Contractors', Subcontractors' Interests Covered <input type="checkbox"/> Installation Floater				\$		
	<b>FIDELITY</b> <input type="checkbox"/> Employee Dishonesty <input type="checkbox"/> Covers Loss to WCIND				\$		
	<b>OTHER</b>						

Description of Operations/Locations/Vehicle/Special Items:  
 \* Specific Project or Location: \_\_\_\_\_

<b>CERTIFICATE HOLDER and ADDITIONAL INSURED</b> WCIND, Its Engineers, Architects, Consultants, Subsidiaries or Affiliates and each of the WCIND Directors, Officers, Employees, Representatives, Agents or Volunteers.	Authorized Representative: _____ <div style="text-align: right;">(Signature Required)</div> Address _____ Telephone # _____ Facsimile # _____
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**THIS IS TO FURTHER CERTIFY THAT:**

1. The company issuing the General Liability Coverage hereby agrees to waive any right of subrogation it may acquire against WCIND, its engineers, its consultants, and all other parties named as insured by reason of any payment made on account of personal injury, bodily injury, including death resulting therefrom, sustained by any employee of the insured or property damage arising out of the performance or furnishing of work under the above referenced Agreement.
2. Each of the above-described policies contains a provision or endorsement that the coverage afforded will not be canceled, adversely changed or non-renewed until at least thirty (30) days prior written notice has been given to WCIND by certified mail.
3. Each of the above listed companies hereby agrees to deliver to WCIND new Certificate of Insurance at least fifteen (15) days prior to coverage renewals or binder within such period and a certificate within fifteen (15) days thereafter.
4. If requested, each of the above-listed companies hereby agrees to deliver two (2) copies of the policies purchased by the Agent to WCIND.
5. Each of the above listed companies is authorized to do business and has an agent for service of process in Florida and has an "A" policy holders rating and a financial rating of at least Class VIII in accordance with the most current Best's rating. For self-insurance funds, financial statements are to be provided, if requested by WCIND. (At WCIND's option, a Best's rating or financial information regarding any self-insurance funds may be waived.)

## SUPPLEMENTARY CONDITIONS

### **Supplementary Conditions To the General Conditions, *Article IV, The Contractor and Its Employees.***

The limits of liability for the following insurance required by the General Conditions, *Article IV, The Contractor and Its Employees*, as amended in the Supplementary Conditions, shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Commercial General Liability. The coverage(s) shall be no less than:
  - (a) Minimum limits of \$1,000,000 per occurrence combined single limit for all liability must be provided, with umbrella insurance making up the difference between the policy limits of underlying policies and the total amount of coverage required. The referenced limit shall be provided as a separate aggregate for the Work (Project Aggregate).
  - (b) Minimum limits of \$2,000,000 Aggregate single limit for all liability must be provided, with umbrella insurance making up the difference between the policy limits of underlying policies and the total amount of coverage required. The referenced limit shall be provided as a separate aggregate for the Work (Project Aggregate).
  
2. Business Automobile Liability. The coverage shall be no less than:
  - (a) Minimum limits of \$1,000,000 combined single limit for all liability must be provided.
  
3. Umbrella/Excess Liability. The coverage shall be no less than:
  - (a) Minimum limits of \$2,000,000 per occurrence must be provided.
  - (b) Aggregate limits of \$5,000,000 must be provided.
  
4. Worker's Compensation and Employer's Liability. The coverage shall include:
  - (a) Coverage A:
    - State: Statutory limits under the Laws of the State of Florida.
    - Federal: Statutory limits under the Laws of the United State of America (e.g., Longshoremen's, etc.)
  - (b) Coverage B:
    - Employer's Liability, bodily injury, occupational sickness or disease, or death of Contractor's employees shall be no less than:
      - 1) \$500,000 Each Accident
      - 2) \$1,000,000 Each Disease
      - 3) \$500,000 Each Employee

WCIND requires Contractor employers to purchase workers compensation insurance for all their employees regardless of the number of employees they have and regardless of any other exemptions. Florida law permits employers who may be exempt from purchase of coverage to waive their exemptions and purchase the coverage. WCIND requires the Contractor to purchase said coverage.
  
5. Builder's Risk "All Risk" or Installation Floater Insurance. Coverage shall be no less than the full insurable replacement value of the Work, including completed Work, Work in progress and all insurable building materials, structures, fences, lights, equipment, pumps, electrical components, and

similar insurable property. Exceptions to insurable property include underground property (after installation), site work and road work.

6. Additional Requirements:

- (a). WCIND must be listed as an Additional Insured on General Liability, Auto Liability and Excess policies;
- (b). Excess/Umbrella policies shall be written as “follow form”;
- (c). The insurance provided for WCIND as Additional Insured shall apply as primary and non-contributory insurance;
- (d). The Additional Insured Endorsement utilized for General Liability must be form CG 20 10 (07/04) and CG 20 37 (07/04) or broader wording in WCIND’s favor as approved by WCIND;
- (e). Contractor shall maintain General Liability coverage for itself and all Additional Insureds for the duration of the Work and maintain completed operations coverage for itself and Additional Insureds for five (5) years after completion of the Work;
- (f). All Contractor insurance policies will include a Waiver of Subrogation in favor of WCIND;
- (g). Each of Contractor’s insurance policies shall be endorsed to provide WCIND with at least thirty (30) days written notice prior to any material change or cancellation of the policy, to the fullest extent commercially available;
- (h). Deductible amounts on Contractor policies shall not exceed \$25,000 and shall require approval from WCIND; and
- (i). In the event Contractor breaches any provision of the Insurance Requirements of the Agreement, WCIND may deduct the cost of any insurance from any funds Payable to Contractor under the Agreement Documents.

**General Conditions**

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## GENERAL CONDITIONS

### 1. Definitions

Wherever in the Agreement Documents the following terms are used, the intent and meaning shall be as follows:

- 1.1 Addenda: Instruments issued by WCIND prior to the advertised time for receipt of Bids that modify the Bid Documents by additions, deletions, clarifications, corrections, or other revisions.
- 1.2 Agreement: The written Agreement between WCIND and the Contractor covering the Work to be performed.
- 1.3 Agreement Documents: The "Agreement Documents" consist of the Agreement, Addenda, Supplementary Conditions, General Conditions, Specifications, Drawings, Change Order, Change Authorizations, and all other documents expressly incorporated by specific reference thereto. The Agreement Documents are sometimes collectively referred to as the "Agreement".
- 1.4 Allowances: A specified sum included in the Contract Price to be utilized only at the discretion of WCIND.
- 1.5 Alternates: A specified portion of the Work listed on the Bid which has been added to or deducted from the Base Bid, at WCIND's discretion, as identified in the Agreement.
- 1.6 Architect/Engineer: WCIND or its authorized representatives identified in the Notice to Proceed letter, which may include but is not limited to the WCIND's Architect/Engineer, the Construction Manager, the WCIND's representatives, and the Architect/Engineer of Record. In the event an Architect/Engineer is not employed on the project, or an Architect/Engineer is not otherwise specified in the Notice to Proceed, the term shall be read as coterminous with the term "WCIND" or "Owner."
- 1.7 As Approved: The words "As Approved," unless otherwise qualified, shall be understood to be for conformance with the Agreement Documents.
- 1.8 As-Built Drawings: A set of the Drawings marked up by the Contractor to show the Work as constructed with all modifications from the original Drawings.
- 1.9 Bid Documents: The "Bid Documents" consist of WCIND's Request for Qualifications (RFQ) for the District Headquarters Facility Project and Contractor's Bid submitted in response to the RFQ.
- 1.10 Bid Security: The Bid Bond, certified check or cashier's check provided pursuant to this RFQ to protect WCIND from the unauthorized withdrawal of Bid or refusal to execute the Agreement Documents.
- 1.11 Business Day: The term Business Day means each day occurring Monday through Friday.
- 1.12 Change Authorization: A written instrument which, when recommended by the Owner Representative or Architect/Engineer and signed by WCIND, authorizes and directs the Contractor to perform changes in the Work as described in the Change Authorization, and/or gives the basis, if any, for a subsequent adjustment in Contract Price or Contract Time. Upon receipt of a Change Authorization, the Contractor is authorized and required to perform the subject changes in the Work.
- 1.13 Change Order: A written instrument which, when recommended by the Owner Representative and signed by WCIND and the Contractor, amends the Agreement Documents to provide for changes in the Work, and/or Contract Price, and/or Contract Time.
- 1.14 Construction Directive: A written instrument issued by the Architect/Engineer pursuant to Paragraph 7.2.9.

- 1.15 Contractor: The person(s), partnership, firm, or corporation that entered into and is (are) identified in the Agreement.
- 1.16 Contractor's Representative: The Contractor's superintendent, project manager or other person at the location of Work authorized to direct the Work and receive communications from WCIND or Owner Representative.
- 1.17 Contract Price: The total compensation payable by WCIND to the Contractor for the performance of the Work by the Contractor in accordance with the requirements of the Agreement Documents, as stated in the Agreement and adjusted by all Change Order and Change Authorizations.
- 1.18 Contract Time: Unless otherwise specified, the Contract Time for all or a designated part of the Work is the period of time allowed, subject to Change Order and Change Authorizations, for completion of a specified part of the Work. The first Day of Contract Time shall be that date as specified on the Notice to Proceed as the date the Contract Time shall commence.
- 1.19 Correction Period: The period of time established in paragraph 4.20.2 hereafter for the correction of Defective Work.
- 1.20 Day: Unless otherwise specifically stated, the term Day shall be understood to mean calendar day.
- 1.21 Defective: A term used to refer to Work that is faulty, unsatisfactory, deficient, damaged or does not conform to the requirements of the Agreement Documents and all applicable Laws and Regulations.
- 1.22 Drawings: The term Drawings refers to the various drawings, profiles, cross sections, elevations, details, plans and other working drawings and supplementary drawings, or reproductions thereof, sealed by the Architect/Engineer, which show the location, character, dimensions, details of the Work to be performed, all as identified in the Agreement. Drawings may either be bound in the same book as the balance of the Agreement Documents or bound in separate sets, and are a part of the Agreement Documents, regardless of the method of binding.
- 1.23 Final Completion: The completion of all the Work in accordance with the Agreement Documents.
- 1.24 Laws And Regulations: Federal, State, and Local Statutes, Judicial and Administrative Decisions, Laws, By-Laws, Codes, Rules, Regulations, Resolutions, Ordinances, and/or Orders applicable to the Project.
- 1.25 Lump Sum Price: The price paid for a specified quantity of Work, which when performed, is paid for on the basis of an agreed price for the completed Work.
- 1.26 Notice: The term "Notice" or the requirement to notify, as used in the Agreement Documents or applicable Laws and Regulations, shall signify a written communication delivered in person; or by certified or registered mail, return receipt requested, to the individual, to a member of the firm, or to an officer of the corporation for whom it is intended.
- 1.27 Notice to Proceed: The written Notice issued by WCIND to the Contractor, authorizing it to proceed with the Work in accordance with the Agreement Documents, and fixing the date for which the Contract Time shall commence.
- 1.28 Or Equal: The term "or equal" shall be understood to indicate that the "equal" product is the same or better than the named product in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the Project design requirements will be made by the Architect/Engineer.
- 1.29 Owner Representative or Project Manager: An authorized representative of the Owner that may provide administrative and construction inspection services during the pre-construction, construction, and closeout phases of the Contract and through which the



- orders of the Owner shall be given. The Owner Representative has no authority to modify or waive any provision of the Contract Documents.
- 1.30 Partial Utilization: Use by WCIND of a portion of the Work (as designated by WCIND) before reaching Substantial Completion for all the Work.
- 1.31 Payment Application: The forms provided by WCIND which shall be used by the Contractor in requesting partial or final payment.
- 1.32 Permit Allowance: The Permit Allowance is for WCIND's use in reimbursing the Contractor for the actual cost of permit fees required by Laws and Regulations necessary to perform the Work. This is a pass-through cost and no mark-ups are allowed on the Permit Allowance.
- 1.33 Progress Report: A written report(s) indicating progress of the Work, estimated date for delivery of materials, and proposed plan for recovery of any delays to the timing and sequence of Work set forth in the Progress Schedule and proposed plan for recovery of any delays to the timing and sequence of Work set forth in the Progress Schedule.
- 1.34 Progress Schedule: Schedule which shows the timing and sequence of Contractor's proposed execution of the Work and all subsequently issued updates thereto, after said updates have been reviewed and accepted by WCIND.
- 1.35 Project : The name of the Project is as identified in the Agreement.
- 1.36 Project Allowance: The Project Allowance is solely for WCIND's use in the payment for changes in the Work, where such changes have been approved pursuant to the Agreement Documents.
- 1.37 Record Drawings: Drawings that are prepared by the Architect/Engineer reflecting as-built information provided by the Contractor on Contractor's As-Built Drawings.
- 1.38 Shop Drawings: All drawings, diagrams, illustrations, schedules, and other data prepared by or for the Contractor to illustrate some part of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other data prepared by a Supplier and submitted by the Contractor to illustrate items of material or equipment.
- 1.39 Specifications: The term "Specifications" refers to those written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work, and certain administrative details applicable thereto, all as identified in the Agreement. Where standard Specifications, common to the construction industry and to standard engineering practice, are referenced to or are otherwise applicable, the applicable portions of the most current versions of such standard Specifications shall become a part of these Agreement Documents. If referenced standard Specifications conflict with Specifications contained herein, the requirements contained herein shall control unless contrary to Laws and Regulations.
- 1.40 Subcontractor: An entity having a Contract with the Contractor for performing labor on the Work on the Project, or for performing both labor on the Project and furnishing materials or equipment.
- 1.41 Submittal: The term Submittal includes shop drawings, tests, samples, Progress Schedules and other schedules, Progress Reports and other reports, and any other documents required for submission by the Agreement Documents.
- 1.42 Substantial Completion: Substantial Completion shall be that degree of completion of the Work or specified portion of the Work in accordance with the Agreement Documents, as specified in the General Conditions, *Article II, Contract Time* of the Agreement, sufficient to provide WCIND, at its discretion, the full-time use of the Work or Partial Utilization of a specified portion of the Work for the purposes for which it was intended.
- 1.43 Supplier: A manufacturer, fabricator, distributor, material man, or vendor having an Agreement with the Contractor for furnishing materials or equipment for the Project.

1.44 Uncontrollable Circumstance: Any act, event or condition affecting the Project, Contractor or WCIND to the extent that it materially and adversely affects: (i) the ability of either party to perform any obligation hereunder (except for payment obligations); or (ii) the cost of such party's performance, if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement;

(1) Inclusions. Subject to the foregoing, such acts or events include the following:

- (a) an act of God, hurricane, landslide, lightning, earthquake, fire, flood, plague, tornadoes, (but not including reasonably anticipated weather conditions for the geographic area of the Work site), explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
- (b) a Change in Law;
- (c) the failure of any appropriate governmental body or private utility having operational jurisdiction in the area in which the Project is located to provide and maintain Utilities to the Work site;
- (d) any failure of title to the Work site or any enforcement of any encumbrance on the site or on any improvements thereon not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby;
- (e) the preemption of materials or services by a governmental body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Project or Work site;
- (f) the presence at the Work site of (i) subsurface structures, materials or conditions having archaeological significance; (ii) any habitat of endangered or similarly protected species; (iii) functioning subsurface structures at the site (to the extent not identified by WCIND to Contractor); and (iv) subsurface conditions of which Contractor, through the exercise of reasonable diligence, could not reasonably be expected to have notice;
- (g) strikes by an organized union of the Contractor's Subcontractors;
- (h) the failure of WCIND to obtain any permit or approval which is WCIND's responsibility to obtain, on or prior to the dates set forth in the Project Schedule.

(2) Exclusions. It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

- (a) general economic conditions, interest or inflation rates, or currency fluctuations or exchange rates;
- (b) changes in the financial condition of WCIND, Contractor or any Subcontractor affecting the ability to perform their respective obligations;
- (c) the consequences of error, neglect or omissions by the parties and any Subcontractor in the performance of any Work or responsibilities under this Agreement;
- (d) any increase for any reason in premiums charged by the Contractor's insurers or the insurance markets generally for the required Insurance;
- (e) the failure of Contractor to secure any patents or licenses in connection with the technology necessary to perform its obligations hereunder;
- (f) the failure of any Subcontractor or Supplier to furnish labor, materials, services or equipment for any reason other than for acts or events specifically included herein as Uncontrollable Circumstances;

- (g) equipment failure except when due to acts or events specifically enumerated herein as Uncontrollable Circumstances; or
- (h) any Change in Law with respect to the issuance of any permit or approval, the enactment of any statute, or the promulgation of any regulation affecting the standards or requirements of performance, the terms and conditions of which do not impose more stringent or burdensome requirements on the Project or Contractor than in effect on the Effective Date of the Agreement.

- 1.45 Unit Price: The price paid for units of Work which, when performed, is measured and paid for on the basis of units.
- 1.46 WCIND or Owner: WCIND, an independent multi-county special tax district of the State of Florida, is the Owner of the Work described in the Agreement Documents. The term "Owner" and "WCIND" are interchangeable
- 1.47 Work: The word "Work" within these Agreement Documents shall include all material, labor, services, documentation, tools, equipment, fuel, utilities, temporary facilities and all appliances, machinery, transportation, and appurtenances necessary to perform and complete the Project in accordance with the Agreement Documents, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described in the Agreement Documents or indicated and as required by good practice to provide a complete and satisfactory system(s) or structure(s).
- 1.48 Working Hours: Working Hours shall mean the hours between 7:00 a.m. and 6:00 p.m., Monday through Friday, excluding legal holidays. Maintenance of equipment will be allowed outside of Working Hours.
- 1.49 Other terms not defined herein shall have the meanings assigned to them elsewhere in the Agreement Documents, and if not assigned and where the context will permit, as used or defined in the Florida Statutes.

## 2. Agreement Documents

### 2.1 Intent of Agreement Documents

- 2.1.1. The Agreement Documents comprise the entire Agreement between WCIND and the Contractor concerning the Work. The Agreement Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Agreement Documents is to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Agreement Documents. Any work, materials, or equipment that may reasonably be inferred from the Agreement Documents as being required to produce the indicated result shall be supplied whether or not specifically called for, with no increase in the Contract Price or extension of the Contract Time. When words which have a customary technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning, unless a contrary definition appears in the Agreement Documents, in which case the Agreement Documents shall control.
- 2.1.2. Whenever the terms "as ordered", "as directed", "as required", "as allowed", "As Approved", or terms of like effect, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory", or adjectives of similar effect, are used to describe a requirement, direction, review, or judgment of the Architect/Engineer or WCIND as to the Work, it is intended that the requirement, direction, review, or judgment will be to evaluate the Work for compliance with the Agreement Documents.
- 2.1.3. No use of any provision of any standard Specifications, manual, or code (whether or not expressly incorporated by reference in the Agreement Documents), or Suppliers' instructions, shall be effective to (a) change the duties and responsibilities of the Contractor, WCIND,

Owner Representative or Architect/Engineer, or any of their consultants, agents, or employees from those assigned in the Agreement Documents; or (b) to assign to the Contractor, WCIND, Owner Representative, or Architect/Engineer, or any of their consultants, agents, or WCIND employees, any duty or authority to supervise or direct the execution of the Work or to assume responsibility contrary to the provisions of the Agreement Documents.

## 2.2 Priority of the Agreement Documents

- 2.2.1. In resolving inconsistencies or apparent conflicts among the Agreement Documents, the first listed below shall take precedence and control over those following:
  - a. Agreement
  - b. Supplementary Conditions
  - c. General Conditions
  - d. Specifications / Drawings
  - e. Front-Ends
- 2.2.2. In resolving inconsistencies between Drawings and Specifications, Contractor shall be obligated to comply with the more costly or stringent requirement, as determined by WCIND. Figure dimensions on Drawings shall take precedence over scale dimensions. Detailed Drawings shall take precedence over general Drawings.

## 2.3 Examination and Verification of Agreement Documents

- 2.3.1. Before undertaking each part of the Work, the Contractor shall carefully study and compare the Agreement Documents with each other, check and verify pertinent figures and all applicable field measurements, and compare and coordinate related requirements for Work (i.e. location, dimensions, fit, completeness, consistency, etc.).
- 2.3.2. The Contractor shall, immediately upon discovery, report in writing to the Owner or Architect/Engineer or Owner Representative any conflict, error, omission, or ambiguity in the Agreement Documents which the Contractor discovers, whether prior to or while performing the Work, and shall obtain a written interpretation or clarification from the Architect/Engineer or Owner Representative before proceeding with any affected Work. The Architect/Engineer or Owner Representative shall promptly investigate the matter and until such interpretation or clarification is obtained from the Architect/Engineer or Owner Representative, any Work done by the Contractor which is directly or indirectly affected by same, will be at the Contractor's risk and the Contractor shall bear all resultant costs and delays.

## 2.4 Documents to be kept on the Project Site

The Contractor shall keep at least one copy of the Drawings and Specifications on the Project site in good order, available to WCIND and its representatives. The Contractor shall maintain on a daily basis at the Project site, and make available to the Owner Representative and Architect/Engineer on request, one current set of As-Built Drawings which have been accurately marked by Contractor to indicate all modifications in the completed Work that differ from the original Drawings. As a condition precedent to Final Completion of the Work, the Contractor shall give the Owner Representative one complete set of these As-Built Drawings.

## 2.5 Additional Drawings

The Owner Representative shall furnish to the Contractor **Four (4)** sets of sealed Drawings (24' X 36') hard copies, one PDF copy and one AutoCAD electronic copy; sets of sealed Drawings and one (1) reproducible set of the Drawings.

## 2.6 Ownership of Drawings and Specifications

All portions of the Drawings and Specifications, and copies thereof furnished by the Owner Representative are the property of WCIND. They are not to be used on other work and are to be returned to the Owner Representative at the completion of the Work with the exception of the Contractor's record set. Any reuse or adaptation of these materials by Contractor without specific written permission by WCIND is expressly prohibited and shall be at the risk of the Contractor and without liability or legal expense to WCIND or Owner Representative. The Contractor shall hold WCIND and the Owner Representative harmless from any and all damages and claims, including reasonable attorneys' fees and legal assistants' fees, for such unauthorized use.

### **3. The Architect/Engineer/Owner Representative**

- 3.1 The Architect/Engineer shall respond to questions which may arise as to the quality and acceptability of materials furnished, work performed, and as to the manner of performance and rate of progress of the work in accordance with the time frames prescribed in the Contract Documents. The Architect/Engineer shall decide all questions which may arise as to the interpretation of the Contract Documents relating to the Work, and the fulfillment of the Contract on the part of the Contractor, and those decisions shall be binding on the Contractor.
- 3.2 The Architect/Engineer is not authorized to revoke, alter, or waive any requirement of the Contract.
- 3.3 The Architect/Engineer, Owner and Owner Representative shall have free access to the Work and materials at all times to facilitate the performance of his duties.
- 3.4 Subject to concurrence by the Owner, the Owner Representative or Architect/Engineer shall have the right to observe and reject any material or work performed which does not meet the requirements of the Contract Documents. When the Owner Representative or Architect/Engineer discovers any work in progress or completed that does not meet the requirements of the Contract Documents, the Owner Representative or Architect/Engineer shall reject that portion of the Work affected and shall confirm such rejection in writing, as soon as practical, detailing the reasons for the rejection. Work rejected by the Owner Representative or Architect/Engineer will not be paid for, nor shall any work associated to remove, remediate, or correct such non-conforming work be considered Extra Work. Any such observation and/or rejection shall not be construed as undertaking supervisory control of the Work or of means and methods employed by the Contractor or his subcontractors and shall not relieve the Contractor of any of his responsibilities or obligations under the Contract. The Contractor shall not request or attempt to require the Architect/Engineer to undertake such supervisory control or to administer, supervise, inspect, assist, or act in any manner so as to relieve the Contractor from such responsibilities or obligations.
- 3.5 The fact that the Owner Representative or Architect/Engineer has not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract Documents, shall not bar the Owner Representative or Architect/Engineer from subsequently rejecting said materials or work.
- 3.6 If either the Architect/Engineer or the Owner Representative requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Contract Documents. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work. Should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at no additional cost to the Owner.

- 3.7 Any work done or materials used which are not in compliance with the Contract Documents may be ordered removed and replaced at the Contractor's expense.
- 3.8 The Owner and other agencies having jurisdiction over the work hereunder shall be afforded free access to the site to perform such inspections and tests as may be required to determine conformance of the Work with the Contract Documents.
- 3.9 Neither the Architect/Engineer nor the Owner Representative shall be responsible for any safety obligations imposed on the Contractor by applicable industry standards, licensing requirements, laws, or regulatory requirements.
- 3.10 Inspectors may additionally be employed by the Owner, Owner Representative, or the Architect/Engineer. Inspectors will be authorized to inspect all work and materials which are to become a part of the completed Project. Inspectors will have no authority to revoke, alter or waive any requirements of the Specifications or to make any changes in the Plans. Each Inspector will be authorized to call the attention of the Contractor to any failure of the work to conform to the Plans or the Specifications and will have authority to suspend the work affected until any question at issue can be referred to and decided by the Owner Representative or Architect/Engineer. The Inspector will have no authority to delay the Contractor by failure to inspect the work and materials with reasonable promptness.
- 3.11 If authorized in writing by the Owner, the Owner Representative and/or Architect/Engineer will administer the Contract and the orders of the Owner are to be given through the Owner Representative and/or Architect/Engineer. The Owner Representative and/or Architect/Engineer shall make initial determinations as to the amount and quality of the several kinds of work performed and materials furnished which are to be paid for under the Contract, subject to review and approval by the Owner.
- 3.12 The Owner Representative may observe the Contractor's work for compliance with the Contract Documents. Such observation shall extend to all, or any part of the work done and to the preparation, fabrication, or manufacture of the material to be used. Owner reserves the right to observe the work via its own employees, Owner Representatives, Inspector's, or the Architect/Engineer.
- 3.13 Upon discovery, the Owner Representative shall call the Contractor's attention to faulty workmanship or defective materials and shall reject work and materials not conforming to the requirements of the Contract Documents.
- 3.14 When any work in progress or completed does not meet the requirements of the Contract Documents, the Owner Representative shall have the authority to order the Contractor to shut down that portion of the work affected until the affected work is corrected to the satisfaction of the Owner Representative. The Owner Representative shall confirm this order in writing as soon as practicable, detailing the reasons for the shutdown. Work performed in violation of the Owner Representative's order to shutdown will not be accepted or paid for.
- 3.15 The Owner Representative is not authorized to revoke, alter, or waive any requirements of the Contract. If authorized in writing by the Owner, the Owner Representative will negotiate and act on behalf of the Owner to the authorized limits of his authority as specified in the Contract Documents.
- 3.16 Whenever the Contractor intends to build, assemble, or perform any portions of the Work away from the site, the Contractor shall promptly notify the Owner Representative of such intentions, including where and when such work is to be performed before such work starts. The Contractor shall also make arrangements for access thereto by the Owner, Owner Representative and/or the Architect/Engineer so that the aforementioned portions of the Work may be inspected as needed.
- 3.17 The fact that the Owner Representative has not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract Documents, shall

not bar the Owner Representative from subsequently rejecting said materials or work and does not relieve the Contractor of his responsibility to meet the requirements of the Contract Documents.

- 3.18 The Owner Representative shall not act as a foreman or perform other duties for the Contractor, nor interfere with the management of the work by the Contractor.
- 3.19 The administration, observation of the work, and actions by the Owner Representative, as herein provided, shall not be construed as undertaking supervisory control of the construction work or of means and methods employed by the Contractor or his subcontractors and shall not relieve the Contractor from any of his responsibilities or obligations under the Contract; the Contractor shall not request or attempt to require the Owner Representative to undertake such supervisory control or to administer, to supervise, to inspect, to assist, or to act in any manner so as to relieve the Contractor from such responsibilities or obligations.
- 3.20 If authorized in writing by the Owner, the Owner Representative shall decide all questions relating to the rights of different prime contractors on the Project or site.
- 3.21 All materials and each part or detail of the work shall be subject to observation by the Owner Representative and/or the Architect/Engineer. The Architect/Engineer and the Owner Representative shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required.

#### **4. The Contractor and Its Employees**

##### 4.1 Contractor

- 4.1.1. The Contractor shall independently perform all Work included in the Agreement Documents and shall not be considered an agent of WCIND, the Owner Representative, or of the Architect/Engineer, nor shall the Contractor's Subcontractors, Suppliers, or employees be agents of WCIND, the Owner Representative, or of the Architect/Engineer.
- 4.1.2. The Contractor shall provide competent, suitably qualified and reliable personnel, Subcontractors, and Suppliers to survey and lay-out the Work and furnish and perform the Work in accordance with the Agreement Documents.

##### 4.2 Subcontractors and Suppliers

- 4.2.1. The Contractor shall be responsible and liable to WCIND for the acts and omissions of Contractor's employees, agents, and Subcontractors and Suppliers and their respective employees.
- 4.2.2. The Contractor shall list each Subcontractor or Supplier whom the Contractor intends to award a subagreement, other than those Subcontractors or Suppliers previously listed in the Bid, by submitting to WCIND in writing, for each additional Subcontractor and Supplier, the same information required to be set forth in the Bid.
- 4.2.3. Work performed by a Subcontractor or Supplier shall be through an appropriate written subagreement which expressly binds the Subcontractor or Supplier to the terms and conditions of the Agreement Documents for the express benefit of WCIND, and requires each of them to assume toward the Contractor all of the obligations which the Contractor assumes toward WCIND.
- 4.2.4. The Contractor shall deliver to WCIND a copy of each subagreement with a Subcontractor or Supplier within fifteen (15) Days after receiving the Notice to Proceed or the execution of the subagreement, as applicable.
- 4.2.5. The Contractor shall perform (with the Contractor's own employees) not less than fifty (50%) of the difference between the Contract Price minus the cost of materials for the Project.
- 4.2.6. Nothing contained in the Agreement Documents or any subagreement shall create any contractual relationship between any Subcontractor or Supplier and WCIND, the Owner

Representative, or Architect/Engineer. Provided, however, WCIND shall be named an intended third-party beneficiary under all such subagreements.

#### 4.3 Equal Opportunity

- 4.3.1. At all times during the performance of the Work, Contractor shall comply with Title VII of the Civil Rights Act of 1964 and the Florida Civil Rights Act of 1992. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap, or marital status. The Contractor shall take affirmative action to ensure that employment applications are used and that employees are treated without regard to their race, color, religion, sex, national origin, age, handicap or marital status for employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- 4.3.2. The Contractor shall state in all solicitations or advertisements for employment placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, handicap, or marital status.

#### 4.4 Indemnity

- 4.4.1. In consideration of One Hundred Dollars (\$100.00) separately allocated from the first consideration paid hereunder, and other good and valuable consideration, including WCIND's execution of the Contract, the sufficiency of which is hereby acknowledged by Contractor, Contractor shall indemnify and hold harmless WCIND, its officers, employees, agents, representatives and consultants from and against all liabilities, costs, losses, and damages (including, but not limited to, all reasonable attorney's fees to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor, any Subcontractor, or any individual or entity directly or indirectly employed or utilized by Contractor in the performance of the Work under this Agreement. This indemnification shall also include all liabilities, damages, losses and costs including, but not be limited to, reasonable attorneys' fees arising out of any infringement of patents or copyrights incident to performing the Work by the Contractor, any Subcontractor or any person or organization employed by Contractor to perform or furnish any of the Work, or anyone for whose acts any of them may be liable.
- 4.4.2. With respect to all claims against WCIND, the Owner Representative, or the Architect/Engineer by any employee of the Contractor, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor (or any Subcontractor or Supplier) under workers' compensation, disability benefit or other employee benefit acts.
- 4.4.3. The separate consideration recited in paragraph 4.4.1 above is in consideration of the indemnification obligation set forth in this Article 4.4, as well as any other indemnification provided by Contractor under the Agreement Documents.
- 4.4.4 Contractor acknowledges and agrees its indemnification obligations under paragraph 4.4.1 shall be effective and fully enforceable even if any party indemnified hereunder is partially at fault or responsible for the claim; provided, however, Contractor shall not be liable or responsible for indemnifying any claim which is the result of the sole negligence of WCIND, the Owner Representative, Architect/Engineer or any other party indemnified under paragraph 4.4.1.

#### 4.5 Bonds and Insurance



- A. Performance Bonds, Payment Bonds and Other Bonds
- 4.5.1. The Contractor shall furnish Performance Bonds and Payment Bonds, each in an amount at least equal to the Contract Price, in accordance with the requirements of Sections 255.05, Florida Statutes, as security for the faithful performance and payment of all Contractor's obligations under the Agreement Documents. These Bonds shall be in the forms specified in the Agreement Documents. The Contractor shall also furnish any other bonds required in the Supplementary Conditions. All bonds shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Reinsuring companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Attorneys-in-Fact who sign Bonds shall attach a certified copy of their Power of Attorney.
- B. The Contractor's Insurance – General
- 4.5.2. The Contractor shall purchase and maintain the coverage specified in this Article and the Supplementary Conditions, and shall be written for not less than the limits of coverage specified in the Supplementary Conditions. The Contractor shall submit certificates to WCIND itemizing the policies issued, limits of coverage, expiration dates and endorsements provided, using the form provided in the Agreement Documents.
- 4.5.3. The Contractor shall not start or continue to perform any Work unless it has in full force and effect all required insurance as per the Agreement Documents. The Contractor shall submit the insurance certificates provided with these Agreement Documents for review by WCIND prior to performing any Work. All Subcontractors and Suppliers performing Work on the Project shall provide the same types and limits of insurance as is required of the Contractor hereunder, unless otherwise expressly waived in writing by WCIND.
- 4.5.4. Insurance shall be provided by insurance companies authorized to transact business and which have an agent for service of process in the State of Florida, having at least an "A-" Best's Rating and a Class VIII or better financial size category in accordance with the most current A.M. Best Company rating.
- 4.5.5. All the policies of insurance shall be endorsed to provide that any failure of the Contractor to comply with any provisions will not prejudice coverage for WCIND. Deductible amounts shall be reduced or eliminated upon WCIND's written request in which case Contractor shall be entitled to payment of any additional costs for such reduction or elimination of deductibles in accordance with paragraph 7.2 of these General Conditions. The insurer's costs of providing the insured(s) a defense at trial in bankruptcy proceedings, and/or appeal, including attorneys' fees, and legal assistants' fees, shall not be included within the limits of the policy coverage, but shall remain the insurer's separate responsibility.
- 4.5.6. To the fullest extent commercially available, all the policies of insurance shall be endorsed to provide that the coverage afforded will not be cancelled, adversely changed or renewal refused until at least thirty (30) Days' prior written Notice has been given to WCIND by certified mail, return receipt requested. Should any coverage approach expiration during the period in which it is to remain in full force and effect, it shall be renewed prior to its expiration, and certificate filed with WCIND at least thirty (30) Days prior to expiration. WCIND, their officers, agents, and employees shall be named as Additional Insured(s) on the Contractor's and any Subcontractor's commercial general liability, comprehensive automobile liability insurance, umbrella/excess liability and builder's risk policies for any claims arising out of work performed under the Agreement Documents.
- 4.5.7. In case of the breach of any provision of this Article, WCIND, at its option, may take out and maintain, at the expense of the Contractor, such insurance as WCIND may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under the Agreement Documents.
- 4.5.8. In carrying out any of the provisions of the Agreement Documents or in exercising any

authority granted by the Agreement Documents, there will be no personal liability upon any board member, officer, employee or agent of WCIND.

C. The Contractor's Liability Insurance

- 4.5.9. The Contractor shall purchase and maintain commercial general liability and other insurance appropriate for the Work, in the limits of at least those specified in the Supplementary Conditions, and which shall provide protection from claims itemized below which may arise out of or result from the Contractor's performance and furnishing of the Work and the Contractor's other obligations under the Agreement Documents, whether the Work and the obligations be performed or furnished by the Contractor, Subcontractor or any Supplier, to wit:
- a. Claims under workers' compensation, disability benefits, and other applicable similar employee benefits acts;
  - b. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees; claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees; claims for damages insured by personal injury liability coverage sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or by any other person for any other reason; claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use; claims arising by operation of Laws and Regulations for damages because of bodily injury or death of any person or for damage to property; and
  - c. Claims for damages because of bodily injury or death of any person, or property damage arising out of ownership, maintenance, operation, use of loading and unloading of any owned, hired or non-owned motor vehicle used in the Work, including employee non-ownership use.
- 4.5.10. The Contractor's liability insurance shall include contractual liability coverage sufficient to cover the Contractor's indemnification obligations under the Agreement Documents. The Contractor agrees to pay on behalf of WCIND, and to provide and pay for a defense for all claims covered by the Contractor's obligations under the indemnification provisions.
- 4.5.11. The Contractor's liability insurance shall be endorsed to include as additional insured: WCIND, their consultants, any subsidiaries or affiliates, and each of their directors, officers, shareholders, agents, or employees. The insurance afforded to these additional insured shall be primary insurance, and neither the coverage nor the amount of insurance provided under the Contractor's policies shall be reduced or prorated by the existence of any other insurance applicable to any loss they may have sustained. If the Subcontractors and Suppliers do not purchase and maintain the coverage specified in this Article or the Supplementary Conditions, they shall be included in the Contractor's policies as additional insured.
- 4.5.12. The Contractor's liability insurance shall remain in effect until three (3) years after Final Completion and at all times after that when the Contractor may be correcting or removing and replacing Defective Work. Evidence of insurance shall be furnished to WCIND yearly.
- 4.5.13. These requirements shall not be construed to limit the liability of the Contractor or its insurers. WCIND does not represent that the specified coverage or limits of insurance are sufficient to protect the Contractor's interests or liabilities.

D. Property Insurance

- 4.5.14. The Contractor shall purchase and maintain builder's risk "all risk" completed value insurance coverage for physical loss or damage upon the Work at the Project site to its full insurable value, including completed Work and Work in progress. This insurance shall list WCIND as an additional insured and shall include the interests of the Contractor, Subcontractors and Suppliers, and WCIND's consultants in the Work, all of whom shall be listed as additional insured. At a minimum, and not by way of limitation, it shall insure against extended coverage,

perils of fire, lightning, windstorm, flood, rain, hail, explosions, riot, tornado, hurricane, sink holes, theft, vandalism and malicious mischief, collapse and water damage and shall include damages, losses and expenses arising out of or resulting from any insured loss incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). If not covered under the "all risk" insurance, the Contractor shall purchase and maintain similar property insurance on parts of the Work stored on and off the Project site or in transit whether or not such Work is included in a Payment Application. The policy shall be endorsed to permit use or occupancy by WCIND prior to Final Completion. The property insurance may have a deductible amount, which shall be borne by the Contractor, not exceeding \$25,000.00. The property insurance shall comply with the requirements of this Article.

E. Waiver of Subrogation Rights

4.5.15. WCIND and the Contractor intend that all policies of insurance shall protect WCIND and the Contractor, and provide primary coverage for all losses and damages caused by the perils covered. Accordingly, all such policies shall be endorsed to provide that in the event of payment of any loss or damage the insurer shall have no rights of subrogation or other recovery against any of the parties named as insured or additional insured, and if the insurers require separate waiver forms to be signed by WCIND's consultants, WCIND will obtain separate waiver forms, and if such forms are required of any Subcontractor or Supplier, the Contractor will so obtain them.

4.6 Taxes and Charges

The Contractor shall pay any and all sales and use taxes and all withholding taxes, whether State or Federal, and pay all Social Security charges and also all State Unemployment Compensation charges, and pay or cause to be withheld, as the case may be, any and all taxes, charges, fees, or sums whatsoever, which are now required to be paid or withheld under any laws, unless otherwise modified in the Supplementary Conditions.

4.6.2. WCIND reserves the right to implement an Owner's Direct Purchase sales tax savings program with respect to the Project. In such event, Contractor shall cooperate and assist WCIND, at no additional cost, with respect to the implementation of that sales tax savings program. WCIND and Contractor shall work together to identify particular pieces of equipment and material that are suitable for direct purchase by WCIND. As such items are identified, WCIND shall issue purchase orders, in accordance with a schedule mutually acceptable to WCIND and Contractor, to the appropriate Suppliers of such items for the direct purchase of those items by WCIND. WCIND shall pay the Supplier of such items directly and the title for such items shall pass directly from the Supplier to WCIND. Notwithstanding the foregoing, Contractor shall remain responsible for the ordering, scheduling, coordinating, insuring, delivery, unloading, storage, installation, operation, and warranties of all such direct purchase items, as if Contractor had purchased the items itself for incorporation into the Work. In that regard, WCIND shall assign to Contractor all contract and warranty rights WCIND may have against any such Supplier, so as to permit Contractor to assert warranty or other contract claims for defective or nonconforming materials or equipment directly against the Supplier. As WCIND issues purchase orders to the Suppliers of such items, WCIND and Contractor shall execute a Change Order which deducts from the Contract Price the amount being paid by WCIND, plus the amount of sales tax that otherwise would have been paid on such items. As an inducement to Contractor to more fully cooperate and facilitate this sales tax savings program, Contractor shall receive as a bonus, at the time final payment is to be made hereunder, a sum equal to **zero percent (0%)** of the total amount of sales tax saved by WCIND as a result of these direct purchases.

#### 4.7 Codes, Ordinances, Permits, and Licenses

- 4.7.1. The Contractor shall keep itself fully informed of all applicable Laws and Regulations, which in any manner affect the Work. All permits, licenses, inspection fees, impact fees, and other costs necessary for performance of, compliance with, and/or completion of the Work shall be obtained and paid for by the Contractor, unless otherwise modified in the Supplementary Conditions.
- 4.7.2. If WCIND has obtained and paid for any permits or licenses applicable to the Work, the Contractor shall meet all requirements of those permits and licenses. The Contractor shall bear all costs arising from the Contractor's responsibilities under this Article.
- 4.7.3. All Work is to be performed by Contractor in accordance with the most current applicable Laws and Regulations. Provided, however, in the event of any changes to any applicable Laws and Regulations that take effect after the date Contractor submitted its Bid to WCIND, and under the circumstances it is not reasonable to assume that Contractor was or should have been aware of such changes, and Contractor provides Notice to WCIND of the changes and WCIND thereupon directs Contractor in writing to perform the Work in accordance with such changes, and such changes impact the time and/or cost of Contractor's performance of the Work, a Change Order or Change Authorization shall be issued with respect to such changes.

#### 4.8 Superintendence

- 4.8.1. The Contractor shall keep at the Project site supervisory personnel who shall direct the Work in a competent manner, applying the skills, expertise and attention necessary to perform the Work in accordance with the Agreement Documents. The Contractor shall designate, in writing before starting Work, a competent Project superintendent who shall be an employee of the Contractor and shall have complete authority to represent and to act for the Contractor. The Contractor shall notify WCIND and the Owner Representative in writing prior to any change in superintendent assignment. If WCIND objects to the Contractor's superintendent, the Contractor shall submit a replacement superintendent at no increase in Contract Price nor extension in Contract Time. The Contractor shall be responsible for all construction means, methods, techniques, sequences, and procedures, and for providing adequate safety precautions and coordinating all portions of the Work.
- 4.8.2. If WCIND or the Owner Representative object to any of the Contractor's personnel, by reason of being unfit, incompetent, unskilled, disorderly, intemperate, or otherwise hindering the Work, the Contractor shall promptly correct the problem and, if required by WCIND or the Owner Representative, remove such personnel from the Work. Failure to comply with this provision shall constitute a material breach of the Contract and be grounds for withholding payment.

#### 4.9 Reception of Owner Representative's and Architect/Engineer's Communications

- 4.9.1. The Contractor's Representative at the Project site shall have authority to act on behalf of and contractually bind the Contractor. All communications given to the Contractor's Representative shall be deemed given to the Contractor. Communications of major importance will be confirmed in writing upon request from the Contractor.
- 4.9.2. The Owner Representative or Architect/Engineer may schedule Project meetings for the purposes of discussing and resolving matters concerning the various elements of the Work. The time and place for these meetings and the names of persons required to be present shall be determined by WCIND and the Owner Representative or Architect/Engineer. The Contractor shall comply with these attendance requirements and shall also require its Subcontractors and Suppliers to comply.

#### 4.10 Safety

- 4.10.1. The Contractor shall be solely responsible for the condition of the Project site, including the safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal Working Hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), and all other applicable Laws and Regulations, as well as all applicable safety rules and regulations promulgated by WCIND from time to time. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from compliance with the obligations and penalties set forth therein.
- 4.10.2. The Contractor shall develop and maintain for the duration of this Project a safety program, and a written safety plan specific to the Project that will effectively incorporate and implement all safety provisions required by any Laws and Regulations. The Contractor shall appoint an employee assigned to the Work who shall be responsible to supervise and enforce compliance with the safety program.
- 4.10.3. The Contractor, as a part of its safety program, shall maintain at its office or other prominent place at the Project site, the written safety plan and safety equipment applicable to the Work as prescribed by the aforementioned authorities and all articles necessary for giving first aid to the injured. The written safety plan shall establish the procedures for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the Project site.
- 4.10.4. The Contractor must give WCIND and the Owner Representative prompt Notice of all accidents or injuries whatsoever arising out of, or in connection with, the performance of the Work, whether on or adjacent to the Project site, giving full details in writing, including statements of witnesses. The prompt Notice required hereunder shall be given within 24 hours with respect to any injuries, and within two (2) working days as to all other accidents.
- 4.10.5. If a claim is made by anyone against the Contractor or any Subcontractor for any reason including, but not limited to, any accident, the Contractor shall give WCIND and the Owner Representative prompt Notice, giving full details of the claim.

#### 4.11 Protection of Work and Property

- 4.11.1. The Contractor shall have full responsibility for locating all underground utilities in advance of excavation (whether they are indicated on the Agreement Documents or indicated by visible markers); scheduling excavation and uncovering in advance, unless it conflicts with Work already uncovered; shoring, blocking, and protecting the underground utilities; repairing any damage done to the satisfaction of WCIND or the owners of those underground utilities; giving prompt Notice to WCIND and the Owner Representative of any newly discovered underground utility; and the safety, protection and repairing of any damage done to any affected Work. All costs involved and time required to perform these responsibilities shall be considered as having been included in the Contract Price and in the Progress Schedule for performing the Work within the Contract Time; except that in the case of newly-discovered underground utilities, those costs and times shall, upon proper documentation, be considered pursuant to the General Conditions, *Article 6.8. Differing Site Conditions*, for adjustment of the Contract Price and/or the Contract Time.
- 4.11.2. The Contractor shall at all times safely guard and protect from damage WCIND's property, property on which the Project is located if not owned by WCIND, adjacent property, and its own Work from injury or loss. The Contractor shall provide all facilities required for protection of the Work according to all Laws and Regulations and local conditions.
- 4.11.3. The Contractor shall protect its Work and materials from damage due to the nature of the Work, the natural elements, carelessness of others, or from any cause, until Final Completion

of the Work.

- 4.11.4. The Contractor shall notify owners of adjacent property (including underground utility owners) not less than 48 hours, or the time period required by Laws and Regulations, whichever period is longer, prior to the Work affecting the property, and shall coordinate and cooperate with them in the location, protection, removal, relocation, and/or replacement of their property. All damage, injury or loss to property caused, directly or indirectly, in whole or part, by the Contractor, any Subcontractor or Supplier or anyone for whose acts any of them may be liable, shall be remedied at the Contractor's expense. The Contractor shall shore up, brace, underpin, and protect as may be necessary, all foundations and other parts of all existing structures adjacent to the Project site.

#### 4.12 Responsibility of Contractor to Act in Emergency

In case of an emergency which threatens loss or injury to persons or property, the Contractor shall take appropriate remedial action, without previous instructions from WCIND or the Owner Representative, as the situation may warrant, and immediately provide Notice to WCIND and the Owner Representative of its action. Any claim for compensation by the Contractor, together with substantiating documentation in regard to expense caused by emergency acts, shall be submitted to WCIND and the Owner Representative and the amount of compensation if any, shall be determined by mutual Agreement.

#### 4.13 Materials and Appliances

- 4.13.1. Unless otherwise modified in the Supplementary Conditions, all materials to be incorporated into the Work shall be new. The Contractor shall furnish satisfactory evidence to the Owner Representative as to the kind and quality of materials.
- 4.13.2. In selecting and/or approving equipment and materials for installation in the Project, neither WCIND nor the Owner Representative or Architect/Engineer shall be responsible for injuries or claims resulting from failure of the equipment or material to comply with Laws and Regulations and applicable federal, state, and local safety codes or requirements, or other applicable safety requirements, or failure due to the Work being Defective.

#### 4.14 Contractors' and Manufacturers' Compliance with State Safety Laws and Regulations, OSHA, and Other Code Requirements

The completed Work shall include all necessary permanent safety devices, such as machinery guards and similar safety items required by the state and federal (OSHA) industrial authorities and other Laws and Regulations. Further, any features of the Work subject to such safety regulations shall be fabricated, furnished, and installed (including installation of WCIND-furnished equipment) in compliance with these requirements. Subcontractors and Suppliers shall be held responsible for compliance with the requirements included herein. The Contractor shall notify all Suppliers and Subcontractors of the provisions of this Article.

#### 4.15 Submittals

- 4.15.1. After checking and verifying all field measurements and after complying with all applicable procedures, Contractor shall submit to the Architect/Engineer for its review all Submittals, which shall bear a stamp or specific written indication that the Contractor has satisfied Contractor's responsibilities under the Agreement Documents with respect to Submittals. All Submittals shall be promptly submitted by Contractor so as to cause no delay to the completion of the Work. All Submittals shall be identified as the Architect/Engineer may require. The data shown shall be complete with respect to quantities, dimensions, specified performance, and design criteria, materials, and similar data sufficient to enable the Architect/Engineer to review the information.
- 4.15.2. All Submittals shall be identified clearly as to material, Supplier, pertinent data such as catalog

numbers, and the use for which it is intended. The Contractor shall review all Submittals prior to submission, for compliance with the Agreement Documents and shall provide specific written certification of compliance.

- 4.15.3. Before each submission, the Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed and coordinated each Submittal with other Submittals and with the requirements of the Work and for compliance with the Agreement Documents. At the time of each submission, Contractor shall provide specific written Notice of each variation from the requirements of the Agreement Documents, and in addition, shall cause a specific notation of each such variation to be made on each Submittal submitted for review and approval. In the absence of such notification, the approval of a Submittal shall not waive or alter the original requirements of the Agreement Documents.
- 4.15.4. The Contractor shall make all corrections required by Architect/Engineer, and shall resubmit the required number of corrected copies of Submittals and new samples for review. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Architect/Engineer on previous Submittals.
- 4.15.5. Where a Submittal or sample is required by the Agreement Documents, any related Work performed prior to the Architect/Engineer's review and approval of the pertinent Submittal shall be at the Contractor's sole expense and responsibility.
- 4.15.6. Submittals are to demonstrate how the Contractor intends to conform with the design of the Project and the information given in the Agreement Documents.
- 4.15.7. All costs incurred by WCIND and the Architect/Engineer for the review of a particular Submittal after the Architect/Engineer's second review shall be borne by the Contractor, and shall be reimbursed by the Contractor to WCIND. WCIND may withhold such costs from payments to the Contractor.
- 4.15.8. The Contractor shall not be entitled to any claim for additional time or compensation caused by the review of any resubmittals.

#### 4.16 Substitution of Materials

- 4.16.1. Whenever materials, equipment, type of construction, or process are described in the Agreement Documents by using a brand name, make, manufacturer, supplier, patent, catalog number, or technique, the naming or Specifications of the item is intended to denote the standard of quality and essential characteristics of the item or process required by WCIND. Unless words indicating that no substitution is permitted are used, items from prospective suppliers may be accepted by the Architect/Engineer if sufficient information is submitted by the Contractor in its written application for the substitution to allow the Architect/Engineer to determine whether the material or equipment proposed (1) will perform at least equally well, function, and achieve the results called for by the design, (2) is at least of equal materials of construction, quality and necessary essential design features, (3) is suited to the same use as that named or specified, (4) conforms to the desired detailed requirements for that item including, but not limited to, durability, strength, appearance, dimensions, aesthetics (where aesthetics are essential), safety, service, comparable usefulness, reliability, economy of operation, and ease of maintenance, (5) evidences a proven record of performance, and (6) will not extend the Contract Time or increase the Contract Price. Contractor shall be responsible for and shall pay all costs in connection with any inspection or testing required in connection with WCIND's or Architect/Engineer's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work.
- 4.16.2. Each application for a substitution shall certify that the proposed substitute will meet each of the six criteria itemized in paragraph 4.16.1., and that the evaluation and acceptance by the Architect/Engineer of the proposed substitute will not prejudice completion of the Work

within the Contract Time. All variations of the substitute from the item named or specified shall be identified (operation, materials or construction finish, thickness or gauge of material dimensions, loads, tolerances, deleted/added features, etc.), and information regarding available maintenance, repair, and replacement service shall be indicated. The Contractor is solely responsible for verifying that substitutes are in accordance with the Agreement Documents, and that dimensions, arrangement, design, and construction details, and all other features of substitutes are suited to the specified purpose.

- 4.16.3. A proposed substitute will be accepted as equivalent or "Or-Equal" to that named or specified if, in the Architect/Engineer's judgement, it meets the criteria in paragraph 4.16.1. No substitute shall be utilized, ordered, or installed without the Architect/Engineer's prior written acceptance.

#### 4.17 Tests, Samples, and Observations

- 4.17.1. The Contractor shall furnish, with no increase in Contract Price, the necessary test pieces and samples, including facilities and labor for obtaining the same, as required by the Agreement Documents or requested by the Architect/Engineer. When required by the Agreement Documents or requested by the Architect/Engineer, the Contractor shall furnish certificates of any designated tests of materials and equipment.
- 4.17.2. The Contractor shall establish a quality control system to ensure sufficient supervision, inspection and testing of all items of Work, including those of the Subcontractors and Suppliers, and to ensure conformance to the applicable Agreement Documents with respect to products, workmanship, construction, maintenance, finish, functional performance, and identification. The Contractor's quality control system shall include checking, approval, and coordination of Submittals and the surveillance of all specified tests.
- 4.17.3. WCIND, the Owner Representative, and the Architect/Engineer, authorized government agents and their representatives shall at all times be provided safe access to the Work whenever it is in preparation or progress, and the Contractor shall provide facilities for such access and for observations, including maintenance of temporary and permanent access.
- 4.17.4. If the Agreement Documents, Laws and Regulations, or any public authority requires any Work to be specially tested or approved, the Contractor shall give timely Notice to the Owner Representative or Architect/Engineer of its readiness for testing or approval.
- 4.17.5. If any testing, inspection, or approval reveals failure of any part of the Work to conform to the Agreement Documents, the Contractor shall not recover any costs made necessary by that failure, and shall reimburse WCIND for all direct, indirect, and consequential costs made necessary by that failure including those of repeated procedures, and compensation for the Owner Representative and Architect/Engineer's services. Such reimbursement may be withheld from payment to the Contractor.
- 4.17.6. If a portion of the Work is covered contrary to the Architect/Engineer's request or to requirements specifically expressed in the Agreement Documents, it must, if required by the Architect/Engineer, be uncovered for the Architect/Engineer's examination and be recovered at the Contractor's expense without change to the Contract Time or Contract Price. If any Work should be covered up without approval or consent of the Architect/Engineer, re-examination of questioned Work may be ordered by the Architect/Engineer, and if so ordered, the Work shall be uncovered by the Contractor. If it is found that such Work is Defective, Contractor shall bear all direct, indirect, and consequential costs of such uncovering, exposure, observation, inspection, correction of the Defective Work, and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals) and WCIND shall be entitled to reimbursement or to deduct the costs from payment to the Contractor. If it is found that such Work is not Defective, WCIND shall reimburse Contractor for the cost of uncovering, inspecting, and



recovering such Work.

#### 4.18 Royalties and Patents

The Contractor shall pay all royalty and patent fees unless otherwise specified. Pursuant to the indemnity provisions of the General Conditions, *Article 4.4, Indemnity*, the Contractor shall defend all suits or claims for infringement of any patent rights and shall save WCIND, the Owner Representative, and the Architect/Engineer harmless from any and all loss, including reasonable attorneys' fees and legal assistants' fees on account thereof.

#### 4.19 Contractor's Right to Terminate Contract

If the Work is stopped under an order of any court or other public authority for a period of more than 3 months, through no act or fault of the Contractor, its Subcontractors, or their respective employees, or if WCIND should fail to pay the Contractor within forty-five (45) Days after the time specified in the General Conditions, *Article 7.1. Partial Payments*, any sum recommended by the Owner Representative and approved by WCIND, then the Contractor may, upon fifteen (15) Days written Notice to WCIND and the Owner Representative, suspend Work. If WCIND fails to correct the conditions, which under this Article justify the Contractor's suspension of the Work, the Contractor may, after fifteen (15) Days additional written Notice to WCIND and the Owner Representative, terminate the Contract. Upon termination, the Contractor's sole and exclusive remedy shall be the same as and limited to those rights set forth in paragraph 6.6.6 hereafter. Contractor shall not be entitled to any additional rights or remedies against WCIND, including loss profits and other damages, all such other remedies being expressly waived by Contractor.

#### 4.20 Warranty and Guarantee; Correction of Defective Work During Correction Period

- 4.20.1. The Contractor warrants and guarantees to WCIND that all Work will be in accordance with the Agreement Documents and will not be Defective, including all Work performed or furnished by any Subcontractor or Supplier. This warranty and guarantee is in addition to and shall survive the Contractor's obligations under the Correction Period set forth in this Article.
- 4.20.2. The Contractor shall make, at its own expense, all repairs or replacements necessitated by Defective Work, and pay for any damage (whether to the Work itself or other property), including routine repairs resulting from such Defective Work, which becomes evident within the one (1) year after the date of Substantial Completion for the entire Work or for specified items of Work, or within one (1) year after the date of Final Completion of the Work if WCIND did not operate or use the entire facility between the Substantial Completion date and Final Completion, or within such longer period of time as may be prescribed by Laws and Regulations or by the terms of any applicable special guarantee required by the Agreement Documents ("Correction Period"). After the Correction Period, Contractor shall remain liable to WCIND, and its successors, for Defective Work and damage resulting from such Defective Work, but such liability shall not include an obligation to make routine repairs, unless otherwise agreed to in writing.
- 4.20.3. Contractor's subagreements with its manufacturer(s) and the Supplier(s) of all other materials and equipment used in the Project which have a cost of more than \$1,000.00 shall require an express warranty from the manufacturer(s) and the Supplier(s) to WCIND that the materials (1) are new, (2) have been manufactured and supplied in accordance with the requirements of the Agreement Documents, and (3) are not Defective. Such express warranty shall be for a period of not less than the Correction Period.
- 4.20.4. Defective Work identified for correction during the Correction Period but remaining Defective after its expiration shall be considered as part of the obligations of the warranty or guarantee.

- 4.20.5. The Contractor agrees to defend, indemnify and hold WCIND, the Owner Representative, and the Architect/Engineer harmless from liability of any kind arising from damage due to Defective Work. The Contractor shall make all repairs and replacements promptly upon receipt of written order for same from WCIND, Owner Representative, or the Architect/Engineer. If the Contractor fails to make the repairs and replacements promptly, or in an emergency, where delay would cause serious risk, loss, or damage, WCIND may have the Defective Work corrected or the rejected Work removed and replaced, and the Contractor and its Surety shall be liable for the cost thereof.
- 4.20.6. Contractor's subagreements with its manufacturer(s) and the Supplier(s) of all materials shall permit the Contractor to assign to WCIND all express and implied warranties from the manufacturer(s) and the Supplier(S). Contractor hereby assigns to WCIND all express and implied warranties from the manufacturer(s) and the Supplier(S) of all materials used in the Work.
- 4.20.7. The specified warranties and guarantees and the Contractor's obligations for correction of Work specified in this Article are in addition to and not in limitation of any other specific remedies provided in the Agreement Documents or by Laws and Regulations.
- 4.20.8. Tests, inspections or approvals shall not in any way relieve the Contractor from its obligations to perform the Work in accordance with the Agreement Documents, or to warrant and guarantee the Work as provided in the Agreement Documents.
- 4.20.9. These provisions shall not be construed to prohibit WCIND from seeking damages or any remedy at law or equity against Contractor for breach of the Contract, Defective Work or the warranties provided herein.

#### 4.21 Allowances

Contractor shall not proceed with any Allowance item unless and until it has received express written authorization from WCIND. The Contract Price shall be adjusted by Change Order or Change Authorization based upon the actual cost of the Allowance items authorized in writing by WCIND.

#### 4.22 Contractor's Representations:

- 4.22.1. Contractor has examined and carefully studied the Agreement and Agreement Documents.
- 4.22.2. Contractor has visited the Work Site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.
- 4.22.3. Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- 4.22.4. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions (if any) at or contiguous to the Work site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Work site which have been identified or made available by WCIND; and (2) reports and drawings of Hazardous Environmental Conditions (if any) at the Work site which have been identified or made available by WCIND.
- 4.22.5. Contractor is aware of the general nature of Work to be performed by WCIND and others at the Work site that relates to the Work to the extent indicated in the Agreement Documents.
- 4.22.6. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Agreement Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Agreement Documents.
- 4.22.7. Contractor has given WCIND written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Agreement Documents and the written resolution thereof by WCIND is acceptable to Contractor.
- 4.22.8. The Agreement Documents are sufficient to indicate and convey understanding of all terms

and conditions for performance and furnishing of the Work.

- 4.22.9. Contractor's execution of this Agreement is not based upon their reliance upon any representation, understanding or agreement not expressly set forth herein. WCIND has not made any representation to Contractor except as expressly set forth herein.
- 4.22.10. Contractor is organized and exists under the laws of the State of Florida and is in good standing in the State of Florida and is authorized to do business in the State of Florida.
- 4.22.11. Contractor has the full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided for herein and therein, all of which have been duly authorized by all proper and necessary action of the governing body of the Contractor. Contractor is in compliance with all laws and regulatory requirements to which they are subject.
- 4.22.12 Contractor executes this Agreement as a free and voluntary act, without any duress, coercion, or undue influence exerted by or on behalf of WCIND or any other party.
- 4.22.13 This Agreement is a valid, binding and enforceable obligation of Contractor, and does not violate any law, rule, regulation, contract or agreement otherwise enforceable by or against Contractor, except as the same may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally.

## **5. WCIND/Owner**

### **5.1 General Provision**

- 5.1.1. Written communications from WCIND to the Contractor shall in general be issued through the Filed Representative,, but if issued directly by WCIND, a copy shall be provided to the Owner Representative.
- 5.1.2. WCIND may issue without negotiation, and at its discretion, Change Authorizations, as provided in the Agreement Documents. Only WCIND is empowered under the Agreement Documents to order changes in the Work that affect Contract Time or Contract Price or quality.
- 5.1.3. If the Work is Defective, or the Contractor fails to supply sufficiently skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in a way that the completed Work will conform to the Agreement Documents, WCIND may order the Contractor to stop the Work, or any portion of the Work in question, until the cause for the stop order has been eliminated; however, this right of WCIND to stop the Work shall not give rise to any duty on the part of WCIND to exercise this right for the benefit of the Contractor or any other party. The Contractor shall not be allowed to recover any costs resulting from an order to stop the Work, and the Contractor shall reimburse WCIND for all direct, indirect, or consequential costs attributable to an order to stop the Work; those costs to be documented as to reasonableness, and WCIND shall be entitled to an appropriate decrease in Contract Price, or to withhold such decrease against any amounts recommended for payment. The Contractor shall remain responsible for maintaining and performing in accordance with the Progress Schedule and shall not be entitled to any extension in Contract Time or any increase in Contract Price.
- 5.1.4. Neither WCIND, the Owner Representative, the Architect/Engineer, nor WCIND's consultants will be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions, and programs related to safety, and neither WCIND, the Owner Representative, nor Architect/Engineer or any of their consultants shall be responsible for the Contractor's failure to perform or furnish the Work in accordance with Agreement Documents.

## **6. Progress of the Work**

### **6.1 Beginning of the Work**

- 6.1.1. Prior to starting the Work, the Contractor shall prepare and submit to the Owner Representative, a Progress Schedule and a schedule for Submittals in a format acceptable to WCIND and the Owner Representative and as specified in the General Requirements showing the dates on which each part or division of the Work is expected to be started and completed, and a schedule for Submittals.
- 6.1.2. No sooner than ten (10) Days before the Notice to Proceed is issued, a pre-construction conference shall be held to review the steps undertaken by the Contractor to comply with the schedule requirements; review the qualifications of the Contractor's on-site personnel; review the Contractor's plans for lay-down and staging areas, construction traffic, and access to the Project site, parking, communications, procedures, and other similar matters.

## 6.2 Schedules and Progress Reports

- 6.2.1. The Progress Schedule or schedule recovery actions, once reviewed and accepted by WCIND and Owner Representative, shall be utilized to report progress or schedule recovery actions, and to evaluate the Contractor's Payment Applications. The Contractor shall be required to keep WCIND informed of the progress of the Work by delivering updated Progress Schedules prior to the seventh (7th) day of each month for WCIND and Owner Representative's review and acceptance. Contractor's Submittal of acceptable monthly updates to the Progress Schedules is a condition precedent to WCIND's obligation to make payments to Contractor hereunder. Notwithstanding anything in the Agreement Documents to the contrary, it is expressly acknowledged and agreed that no review or acceptance of any Progress Schedule by WCIND or Owner Representative shall be construed as an admission or acknowledgement by WCIND or Owner Representative that any such Progress Schedule was either reasonable or achievable.
- 6.2.2. Prior to the seventh (7th) day of each month, the Contractor shall submit to the Owner Representative, an itemized Progress Report of the delivery status of purchased equipment and material, Shop Drawings and the status of shop and field fabricated Work. These Progress Reports shall indicate, but shall not be limited to, the dates of the purchase orders, the estimated delivery dates of any material and/or equipment, and cause(s) of delays, if any.
- 6.2.3. In addition to retainage, WCIND shall have the right to withhold all or any portion of Progress Payments for the Work if the Contractor fails to update and submit the Progress Schedule(S) and Progress Reports as specified.
- 6.2.4. Neither WCIND's nor the Owner Representative's review of the Contractor's Progress Schedule, or WCIND's decision to raise or not to raise any objections about the Contractor's Progress Schedule, shall impose on WCIND or the Owner Representative any responsibility for the timing, planning, scheduling, or execution of the Work, nor relieve Contractor of its obligation to complete the Work in a timely manner.

## 6.3 Prosecution of the Work

- 6.3.1. WCIND and the Contractor agree that time is the essence with respect to Contractor's performance under the Agreement Documents. The Contractor shall perform the Work at such time, and in or on such part(s) of the Project site as may be required to complete the Work as required by the Agreement Documents.
- 6.3.2. If the Contractor desires to carry on Work at night or otherwise outside of the Working Hours, it shall give timely Notice to WCIND and Owner Representative to allow satisfactory arrangements to be made for observing the Work in progress. The Contractor shall reimburse WCIND for all of WCIND's expenses associated with the Work performed outside of normal Working Hours.
- 6.3.3. The Contractor shall carry on the Work and adhere to the most recent approved Progress Schedule during all disputes or disagreements with WCIND. No Work shall be delayed or

postponed pending resolution of any disputes or disagreements. Upon receipt of a written order from the Owner Representative or WCIND, the Contractor will immediately proceed with the Work regardless of whether a Change Order or Change Authorization has or has not been issued.

#### 6.4 WCIND's Right to Retain Imperfect Work

If any part or portion of the Work completed under the Agreement Documents shall prove Defective, WCIND shall have the right in its sole discretion, to retain such Work and may make such deductions in the payment due the Contractor as may be just and reasonable.

#### 6.5 WCIND's Right to do Work

Should the Contractor neglect to prosecute the Work in conformance with the Agreement Documents or neglect or refuse at its own cost to remove and replace Work as shall have been rejected by the Owner Representative or Architect/Engineer, then WCIND may notify the Contractor and its Surety of the condition, and after seven (7) Days written Notice to the Contractor and its Surety, or without Notice if an emergency or danger to the Work or public exists, and without prejudice to any other right which WCIND may have under the Agreement Documents, take over that portion of the Work which has been improperly executed, and correct the deficiencies and deduct the cost thereof from the payments then or thereafter due the Contractor.

#### 6.6 WCIND's Right to Terminate

- 6.6.1. At any time, WCIND may request the Contractor to provide adequate assurances of its ability to complete the Work in the manner and times designated in the Agreement Documents. The types of adequate assurances shall be designated by WCIND and shall consist of reasonable means for the Contractor to prove its ability to perform.
  - A. Termination for Cause
- 6.6.2. WCIND, shall have full power and authority to terminate the services of the Contractor seven (7) Days after providing Notice to the Contractor and its Surety, or sooner if safety to persons or property is in question, because:
  - a. the Contractor refuses or fails to prosecute the Work, or separable part of the Work, with the diligence that will cause its completion within the corresponding Contract Time, including any authorized adjustments; supply sufficient skilled workers, materials or equipment in adherence with the Progress Schedule; or comply with the Progress Schedule requirements; or
  - b. the Contractor fails to complete the Work, or any separable part, within the corresponding Contract Time, including any authorized adjustments; or
  - c. the Contractor refuses or fails to make prompt payment to Subcontractors, disregards Laws and Regulations; refuses or fails to perform the Work in conformance with the Agreement Documents; or violates any provision of the Agreement Documents; or
  - d. the Contractor fails to provide WCIND with adequate assurances in accordance with this Article, that the Contractor can complete the Work in accordance with the Agreement Documents.
- 6.6.3. If, after the furnishing of said Notice, the Contractor and the Surety fail to cure or correct the default, WCIND may terminate Contractor's right to perform the Work and take possession of the Project site and of all materials, tools, and appliances thereon, and require Contractor to assign to WCIND any or all of Contractor's subagreements with Subcontractors or Suppliers, as directed by WCIND, and finish the Work by whatever method it may deem expedient and charge the cost thereof to the Contractor and Surety. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finally completed. If the expense of completing the Work exceeds such unpaid balance of the

Contract Price, the Contractor and its Surety shall pay the difference to WCIND.

- 6.6.4. Where the Contractor's rights to perform the Work have been so terminated by WCIND, the termination shall not affect any rights or remedies of WCIND against the Contractor then existing or which may accrue after termination. Any retention or payment of monies due the Contractor by WCIND shall not release the Contractor from its contractual liability or any other liability.
- B. Termination for Convenience
- 6.6.5. Upon seven (7) Days written Notice to the Contractor and its Surety, WCIND may, without cause and without prejudice to any other right or remedy, elect to terminate the Contractor's services under the Agreement Documents in whole or in part. Upon receipt of such Notice, the Contractor shall immediately proceed in accordance with any specific provisions or instructions, to protect and maintain the Work, and make reasonable and diligent efforts to mitigate costs associated with the termination.
- 6.6.6. In any such termination for the convenience of WCIND, the Contractor, as its sole and exclusive remedy, shall be entitled to payment for that portion of the Contract Price attributable to the Work completed, prior to receipt of the Notice of termination, in accordance with the Agreement Documents, together with Contractor's reasonable and direct out-of-pocket termination expenses; provided, however, Contractor shall not be entitled to any further or additional recovery against WCIND including, but not limited to, any lost profit on Work not performed or any other damages however categorized.
- 6.6.7. If, after Notice of termination for cause as provided in paragraph 6.6.A above, it is determined the Contractor was not in default or that WCIND was not entitled to the remedies set forth therein, the termination shall be deemed to have been for the convenience of WCIND and Contractor's rights and remedies shall be the same as and limited to those set forth in paragraph 6.6.6 above.
- 6.6.8. No waiver, express or implied, of any covenant, provision, right or remedy herein shall at any time thereafter be held to be a waiver of the terms and conditions of this Article.

#### 6.7 Delays and Extensions of Time

- 6.7.1. If the Contractor is delayed in the progress of the Work by any act or neglect of WCIND, the Owner Representative, or the Architect/Engineer, or by any other contractor retained by WCIND, or by strikes, lockouts, fire, adverse weather conditions not reasonably anticipated, or acts of nature, or any other cause beyond the fault and neglect of the Contractor, within 48 hours of the start of the occurrence, the Contractor shall provide Notice to WCIND. Within seven (7) Days after the event which caused the delay has ended, the Contractor must provide full documentation of the impact of the delay. The Contract Time may be extended by Change Order or Change Authorization for such reasonable time as the Owner Representative and WCIND determine. No extension of time will be granted to the Contractor for delays occurring to parts of the Work that have no measurable impact on the completion of the total Work. No extension of Contract Time will be considered for weather conditions reasonably anticipated for the area in which the Work is being performed. Reasonably anticipated weather conditions will be based on official records of monthly precipitation and other historical data. Adverse weather conditions, if determined by the Owner Representative to be of a severity that would impact progress of the Work, may be considered as cause for an extension of Contract Time. No request by the Contractor for an equitable adjustment to the Contract Time under this Article will be allowed, unless the Contractor has given the Notice and documentation within the times required.
- 6.7.2. Delays in delivery of equipment or material purchased by the Contractor or its Subcontractors or Suppliers shall not be considered as a cause for delay. The Contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all

equipment and materials.

- 6.7.3. Within 21 days (unless a longer period of time is reasonably required) after the Contractor submits to WCIND and the Owner Representative a written request for an extension of time, the Owner Representative will present its written opinion to WCIND as to whether an extension of time is justified and, if so, its recommendation as to the number of Days for time extension. WCIND shall make the final decision on all requests for extensions to Contract Time.
- 6.7.4. The Contractor waives its right to file claims unless the claims are filed within the times specified in the Agreement Documents. WCIND's determination shall be final and binding on the Contractor unless the Contractor files suit within thirty (30) days after receipt of WCIND's decision.
- 6.7.5. Notwithstanding anything in the Agreement Documents to the contrary, no interruption, interference, inefficiency, suspension or delay in the commencement or the progress of the Work for any cause whatever, including those for which WCIND, Owner Representative, or Architect/Engineer may be responsible, in whole or in part, shall relieve Contractor of its duty to perform or give rise to any right to damages or additional compensation from WCIND. Contractor expressly acknowledges and agrees that it shall receive no damages for delay. Contractor's sole remedy, if any, against WCIND will be the right to seek an extension to the Contract Time, in accordance with the procedures set forth in this Article 6.7; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage for Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of WCIND, the Owner Representative, or Architect/Engineer, and such delays have a cumulative total of more than 30 calendar days, Contractor may make a claim, in accordance with the procedures set forth in Article 7.3, for its actual and direct delay damages accruing after said 30 calendar days.

#### 6.8 Differing Site Conditions

- 6.8.1. The Contractor shall promptly, and before the conditions are disturbed, provide Notice to WCIND and the Owner Representative of:
- a. any subsurface or latent physical conditions at the Project site which differ materially from those (i) observed by Contractor prior to the Submittal of its Bid or (ii) indicated in the Agreement Documents or the Existing Condition Documents referenced in the Request for Qualifications,
- or
- b. any unknown physical conditions at the Project site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement Documents.
- 6.8.2. The Owner Representative shall investigate the reported conditions promptly after receiving the Notice from the Contractor. If the conditions do materially differ and cause an increase or decrease in the Contractor's cost or time for performance of the work, an equitable adjustment shall be made in accordance with the procedures set forth in Articles 6.7 and 7.3 herein. Notwithstanding the provisions of this paragraph, if the reported condition in question would have been revealed by a thorough on-site inspection, WCIND in its sole discretion shall have the right to deny any such claim for an adjustment in the Contract Price or Contract Time.
- 6.8.3. No request by the Contractor for an equitable adjustment to the Contract Price or Contract Time for differing site conditions will be allowed if made after the time periods set forth in Articles 6.7 or 7.3, or Final Completion, whichever first occurs.

### 6.9 Liquidated Damages

Should the Contractor fail to achieve Substantial Completion of the Work within the Contract Time, as that time may be adjusted pursuant to the terms of the Agreement Documents, the Contractor shall pay to WCIND the liquidated damages as set forth in the Agreement. WCIND shall have the right to deduct the liquidated damages from any amount due, or that may become due to the Contractor. If an insufficient amount of the Contract Price remains, the amount of liquidated damages shall be due and collectible from the Contractor and its Surety, jointly and severally.

### 6.10 Other Contracts

- 6.10.1. WCIND reserves the right to let other contracts in connection with the Project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their equipment and materials for the execution of their work and shall properly interface and coordinate its Work with theirs.
- 6.10.2. If the execution of any part of the Work depends on the performance of any other contractor, utility service company or WCIND, the Contractor shall promptly provide Notice to the Owner Representative of any defects or deficiencies that render it incompatible with the intended results of these Agreement Documents. The Contractor's failure to provide the required Notice shall constitute an acceptance of the work by others as being fit and proper for integration with the Work.

### 6.11 Use of Premises

- 6.11.1. The Contractor shall confine its equipment, the storage of materials, and the operation of its workers to the areas shown on the Drawings or indicated by Laws and Regulations, permits, easements, licenses or directions of WCIND or the Owner Representative. The Contractor shall provide, at its own expense, any right-of-ways or access to the Work which it may require outside the limits of WCIND's property interests or easements and shall furnish WCIND and the Owner Representative copies of permits and agreements for use of property outside that provided by WCIND prior to entering said properties.
- 6.11.2. The Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.
- 6.11.3. The Contractor shall take all precautions to minimize inconvenience to residents living adjacent to the Project site by maintaining access to driveways and providing dust control for the Project site and noise control devices for dewatering 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 land or areas contiguous thereto, resulting from the performance of the Work.

### 6.12 Substantial and Final Completion Dates

- 6.12.1. When the Contractor considers that the entire Work or designated portion thereof has progressed to the point where it is sufficiently complete in accordance with the Agreement Documents, and it has been proven to be ready for its intended use, the Contractor shall provide Notice to WCIND and the Owner Representative that the Contractor considers the Work or designated portion thereof, Substantially Complete (except for listed items to be completed or corrected prior to Final Completion). The Contractor shall prepare an initial list of items of Work to be corrected or completed for Final Completion and attach that list to the above referenced Notice. Within a reasonable time after that, WCIND, the Contractor, and the Owner Representative shall make an inspection to determine the status of completion.
- 6.12.2. If WCIND and the Owner Representative agree that Substantial Completion of the Work has been achieved, the Owner Representative shall issue a Certificate of Substantial Completion



for the purpose of establishing the starting date for specific equipment warranties, and to establish the date that WCIND shall assume the cost of operating such equipment. Said Certificate shall not be considered as Final Completion of any portion of the Work or relieve the Contractor from completing the remaining Work within the specified time and in compliance with the Agreement Documents. The Owner Representative shall review and supplement the Contractor's initial list of items of Work to be corrected or completed for Final Completion and such revised and supplemental list shall be attached to the Certificate of Substantial Completion. Provided, however, the failure to include any incomplete or Defective Work on said list shall not relieve or excuse the Contractor from completing all of the Work in accordance with the requirements of the Agreement Documents.

- 6.12.3. When the Contractor considers the entire Work has progressed to the point where it is complete in accordance with the Agreement Documents, the Contractor shall provide Notice to WCIND and the Owner Representative that the Contractor considers the Work to have reached Final Completion.

#### 6.13 Performance Testing

Operating equipment and systems shall be performance tested in accordance with the General Requirements and in the presence of the Architect/Engineer to demonstrate compliance with the Agreement Documents. The Contractor shall schedule such testing with the Architect/Engineer at least one (1) week in advance of the planned date for testing.

#### 6.14 WCIND's Use of Portions of the Work

Following issuance of the Notice of Substantial Completion, WCIND may occupy and operate the Work. Such occupancy and operation shall not be considered as Final Completion of any portion of the Work, nor shall such occupancy or use be considered as cause for an extension of the Contract Time.

#### 6.15 Cutting, Patching, or Fitting

The Contractor shall do all cutting, patching, or fitting of its Work that may be required to make its several parts come together properly and fit the Work to receive or be received by work of other contractors shown in or reasonably implied by the Agreement Documents.

#### 6.16 Cleaning Up

The Contractor shall, at all times, keep property on which Work is in progress and the adjacent property free from accumulations of waste material or rubbish caused by employees or by the Work. Upon completion of the construction, the Contractor shall remove all temporary structures, rubbish caused by employees, Suppliers, Subcontractors, or the Work, and waste materials resulting from its operations.

#### 6.17 Intoxicants

The Contractor and persons under its employ shall not bring onto, possess, sell, or use alcohol, narcotics, drugs (other than prescription drugs, provided the person in possession of the drug has a valid prescription in his or her name, or over-the-counter drugs which may be purchased legally by the person), or controlled substances while on the Project site, including parking lots, at any time, including all breaks and lunch periods. The Contractor and persons under its employ shall not report to, or commence, or continue to work while under the influence of alcohol or any drugs, regardless of whether those drugs were legally or illegally taken. The Contractor and persons under its employ shall not undertake any activities at the Project site which create a nuisance or improperly disturbs or interferes with WCIND's operations at the Project site or the use and enjoyment of any adjacent properties by their respective owners. Gambling on the Project site is prohibited.

## 7. Payment

### 7.1 Partial Payments

#### A. General

- 7.1.1. Within ten (10) days after commencing the Work, but in any event prior to the Submittal of its first Payment Application, Contractor shall submit to Owner Representative, for Owner Representative's and WCIND's review and approval, a proposed schedule of values which distributes the Contract Price among the various items and categories of Work to be performed. Said schedule of values shall be in such form and contain such detail as may be required by Owner Representative and WCIND. The final approved schedule of values shall serve as the basis for partial payments and shall be incorporated into the Payment Application form provided by WCIND. Nothing contained in this Article shall be construed to affect the right of WCIND or Owner Representative to reject, the whole or any part of the Work, should such Work be found to be Defective. All estimated quantities of Work for which partial payments have been made are subject to review and correction on the final Payment Application. Payment by WCIND and acceptance by the Contractor of partial payments based on Unit Price Work, shall not in any way constitute acceptance of the estimated Unit Price Work by WCIND.
- 7.1.2. The Contractor shall provide WCIND with copies of its written daily reports at weekly intervals. Refusal of the Contractor to provide its daily reports shall be cause for WCIND to withhold payments until the Contractor's daily reports have been provided.

#### B. Estimate

- 7.1.3. The Contractor shall not submit more than one Payment Application per month with respect to the Work. Within twenty-five (25) Business Days following submission of a complete and accurate Payment Application to the Owner Representative, approved by the Owner Representative, and acceptable to WCIND, WCIND shall make partial payments to the Contractor on the basis of Work performed during the preceding calendar month by the Contractor. The final working day of each month shall be used as the day for measurement of Work performed.
- 7.1.4. The Owner Representative shall, within twenty-five (25) Business Days after receipt of each Payment Application for payment, provide Notice to WCIND recommending payment to the Contractor, or return the request to the Contractor providing Notice of the Owner Representative's reasons for refusing to recommend payment. In the latter case, the Contractor may make the necessary corrections and resubmit the request. Payment shall be made by WCIND within ten (10) Business Days after a corrected payment request is received.
- 7.1.5. The Owner Representative may refuse to recommend and WCIND may refuse to pay the whole or any part of any payment, if in the Owner Representative's or WCIND's opinion, the Contractor is not entitled to any such payment. The Owner Representative may also refuse to recommend and WCIND may refuse to pay any payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests of any Work, retract any previous recommendation or payment to such extent necessary in the Owner Representative's or WCIND's opinion to protect WCIND from loss for reasons not limited to:
- a. The Work is Defective, or completed Work has been damaged requiring correction or replacement;
  - b. The Contract Price has been reduced because of Change Order;
  - c. WCIND has been required to correct Defective Work or complete all or portions of the Work;
  - d. The Contractor's unsatisfactory prosecution of the Work in accordance with the Agreement Documents;

- e. Written claims have been made against WCIND or liens have been filed in connection with the Work;
  - f. The Contractor's failure to make payment to Subcontractors OR Suppliers for labor, materials, or equipment;
  - g. Amounts owed by Contractor to WCIND as Liquidated Damages; or
  - h. Any other amounts which may be owed to WCIND by Contractor pursuant to the terms of the Agreement Documents.
- C. Deduction from Estimate
- 7.1.6. Unless modified in the Supplementary Conditions, WCIND shall withhold from each partial payment, **five percent (5%)** of the amount earned for Work completed. A deduction and retainage of **five percent (5%)** shall be made on the estimated amount earned for approved items of material delivered to and properly stored at the Project site but not incorporated into the Work. The retainage is to be withheld by WCIND until all Work has been performed in accordance with the Agreement Documents and until such Work has been accepted by WCIND.
- 7.1.7. WCIND may deduct from each Payment Application an amount equal to WCIND's estimate of the amount of Liquidated Damages then due, or which may become due.
- D. Reimbursement
- 7.1.8. For WCIND's expenses as defined in the General Conditions, *Article 4.15. Submittals*, and for testing that is performed by WCIND or the Architect/Engineer which indicates Work is Defective, or for any other cost for which WCIND is entitled to reimbursement from Contractor under the Agreement Documents, at WCIND's election, such reimbursement shall be deducted from the Contractor's monthly partial payments or shall be paid by Contractor within 30 days after WCIND makes demand for same upon Contractor.
- E. Qualification for Partial Payment for Materials Delivered
- 7.1.9. Partial payments for materials delivered but not yet incorporated into the Work shall be as described below:
- a. Materials, as used herein, shall be considered to be those items which are fabricated and manufactured material and equipment. No consideration shall be given to individual purchases of less than \$200.00 for any one item.
  - b. To receive partial payment for materials delivered to the Project site, but not incorporated in the Work, it shall be necessary for the Contractor to include a list of such materials with the Payment Application, the utilization of WCIND provided forms is required. At its sole discretion, WCIND, with the Owner Representative's advice, may approve items for which partial payment is to be made. Partial payments shall be based on the Contractor's actual cost for the materials as evidenced by invoices from the Supplier. Proper storage and protection shall be provided by the Contractor, As Approved by the Owner Representative. Final payment shall be made only for materials actually incorporated in the Work and upon acceptance of the Work, all materials remaining for which partial payments had been made shall revert to the Contractor, unless otherwise agreed, and partial payments made for these items shall be deducted from the final payment for the Work.
  - c. Contractor warrants and guarantees that title to all items of Work requested in any Payment Application, whether incorporated in the Project or not, shall pass to WCIND at the time of payment for such items, free and clear of all liens, claims, security interests, and encumbrances.

- d. If requested by the Owner Representative, the Contractor shall provide, with subsequent Payment Applications, invoices received by the Subcontractor or Supplier showing payment in full has been made.

F. Payment

- 7.1.10. The amount of partial payment due the Contractor shall be equal to the current value of the Contract Price earned, less, any retainage, less any amounts previously paid, and any deductions for reimbursement as required by the Agreement Documents.

7.2 Payment for Change Orders

- 7.2.1. WCIND, without Notice to the Sureties, shall have the right to order changes to the Work. If the parties agree upon the terms for the change, including any appropriate adjustments to the Contract Price or Contract Time, a Change Order shall be issued. If the parties cannot agree upon the terms for the change, a Change Authorization may be issued by WCIND. The terms of the Change Authorization shall be final and binding upon Contractor, unless Contractor makes a claim, within twenty-one (21) days of its receipt of the Change Authorization, challenging those terms it takes objection to, giving full details and supporting documentation for its specific objections. Any terms not specifically objected to within that twenty-one (21) day period shall be deemed final and accepted by Contractor. Regardless of whether or not Contractor files a timely claim with respect to any of the terms of the Change Authorization, Contractor shall proceed with the change to the Work, as set forth in the Change Authorization, as directed by WCIND or Owner Representative.

- 7.2.2. At WCIND's option, payment or credit for any changes covered by a Change Order or a Change Authorization, whether additive or deductive, shall be determined by one or a combination of the methods set forth in A, B, or C, below, as applicable:

A. Unit Prices

Those Unit Prices stipulated in the Agreement shall be utilized where they are applicable. In the event the Change Order or Change Authorization results in a change in excess of twenty-five percent (25%) of the original Agreement quantity, and the total dollar change in value of that item exceeds twenty-five percent (25%), WCIND will review the Unit Price to determine if a new Unit Price shall be negotiated. Unit Prices for new unit items not listed in the Agreement shall be negotiated and mutually agreed upon.

B. Lump Sum

A total lump sum amount for the Work negotiated and mutually acceptable to the Contractor and WCIND. Lump Sum Price quotations for modifications to the Work shall include substantiating documentation with an itemized breakdown of Contractor and Subcontractor costs, including labor, material, rentals, approved services, overhead, and profit, all calculated as specified under "C" below.

C. Cost Reimbursement Work

The term "cost reimbursement work" shall be for changes to be compensated for on a time and expense basis, that is, on an accounting of the Contractor's forces, materials, equipment, and other items of direct cost as required for the change.

WCIND, at its sole discretion, may direct the change to be accomplished on a cost reimbursement work basis, in which event the change will be priced based upon the labor, materials, equipment and other costs hereafter noted associated with such change. The cost items for cost reimbursement work shall be limited to the following items:

1. Labor, including superintendent and foremen, for those hours associated with the cost reimbursement work (actual payroll cost, including wages, fringe benefits as established by negotiated labor agreements, labor insurance and labor taxes as established by law). Expressly

excluded from this item are all labor costs associated with negotiating the subject change. No other fixed labor burdens will be considered, unless approved in writing by WCIND.

2. Material associated with the change, including sales tax, if paid for by the Contractor or its Subcontractor.

3. Rental, or equivalent rental cost of equipment, including necessary transportation for items having a rental value in excess of \$100.00.

Rental or equivalent rental cost shall be allowed for only those Days or hours during which the equipment is (or would have been for deductive changes) in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality. The rentals allowed for equipment shall, in all cases, be understood to cover all fuel, supplies, repairs, and renewals, and no further allowances shall be made for those items, unless specific agreement to that effect is made.

4. Additional bond as required and approved by WCIND.

5. Additional insurance (other than labor insurance) as required and approved by WCIND.

6. To the costs noted above, for net additive changes, there shall be added the following fixed fees for the Contractor or Subcontractor actually performing the change:

a. A fixed fee of twenty-five percent (25%) of the cost of item 1 above. For costs incurred for Work performed by Subcontractors, the Contractor's fee shall not exceed ten percent (10%) and the Subcontractor's fee shall be the same as for the Contractor; and

b. A fixed fee of ten percent (10%) added to the cost of items 2 and 3.

7.2.3. The fixed fees noted above in the previous paragraph shall be considered to be the full compensation for all cost of general supervision, overhead, profit, and any other general expense.

7.2.4. The Contractor's records shall make clear distinction between the direct costs of Work paid for on a cost reimbursement work basis and the costs of other Work. The Contractor shall furnish the Owner Representative report sheets in duplicate of each day's cost reimbursement work no later than the working day following the performance of said Work. The report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, Subcontractor, or other forces. The report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated.

7.2.5. Material charges shall be substantiated by valid copies of vendors' invoices. Such invoices shall be submitted with the daily reports or, if not available, they shall be submitted with subsequent daily report. Said daily report shall be signed by the Contractor or Contractor's Representative.

7.2.6. WCIND reserves the right to furnish such materials and equipment as it deems expedient, and the Contractor shall have no claim for profit or added fees on the cost of such materials and equipment.

7.2.7. To receive partial payments and final payment for cost reimbursement work, the Contractor shall submit to the Owner Representative, in a manner approved by the Owner Representative and WCIND, detailed and complete documented verification of the Contractor's and any of its Subcontractors' actual costs involved in the cost reimbursement work. Such costs shall be submitted within seven (7) Days after said Work has been performed.

7.2.8. Except for Change Authorizations and Change Order, no other written or oral order from WCIND or the Owner Representative shall be treated as a change in the Work or entitle the Contractor to an adjustment to the Contract Price or Contract Time.

- 7.2.9. The Architect/Engineer, by issuing a Construction Directive, may order minor changes in the Work not involving extra cost, or additional times and not inconsistent with the purpose of the Project, but otherwise, except in an emergency endangering life or property, additions or deductions from the Work shall be performed only in pursuance of an approved Change Authorization or Change Order.
- 7.2.10. Any compensation paid in conjunction with the terms of a Change Order shall comprise the total compensation due the Contractor for the change defined in the Change Order. By signing the Change Order, the Contractor acknowledges that the stipulated compensation adjustment includes payment for alteration of the Work, payment for the interruption of schedules, extended overhead, delay, or any other impact claim or ripple effect, and by such signing specifically waives any reservation or claim for additional adjustment to compensation or time in respect to the subject Change Order.
- 7.2.11. WCIND hereby delegates authority to its General Manager (and his/her designee) to approve any and all Change Order and Change Authorizations in its name, so long as each such Change Order or Change Authorization does not exceed \$330,080.00, and further as long as the cumulative total of all Change Order or Change Authorizations does not exceed \$330,080.00, unless otherwise approved by the WCIND's Board. Each Change Order or Change Authorization over \$330,080.00, or which cumulatively exceeds \$330,080.00 must be expressly approved by WCIND's Board before it shall be binding upon WCIND.

### 7.3 Claims for Additional Compensation

- 7.3.1. In any case where the Contractor may seek additional compensation, except for an emergency threatening imminent property damage or personal injury, the Contractor shall provide Notice to WCIND and the Owner Representative of its intent to make a claim for such compensation before it begins the Work on which it bases the claim, in order that such matter may be settled or other appropriate action promptly taken. If such notification is not given or the Owner Representative is not afforded proper facilities by the Contractor for keeping an accurate account of actual costs, the Contractor shall be deemed to have waived its claim for additional compensation.
- 7.3.2. The Contractor's written Notice, and the fact that the Owner Representative has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim.
- 7.3.3. Claims for additional compensation shall be made in itemized detail and submitted in writing to WCIND and Owner Representative within seven (7) Days following completion of that portion of the Work for which the Contractor bases its claim. If the claim is found to be acceptable by WCIND and the Owner Representative, the Contractor shall be paid as provided in the General Conditions, *Article 7.2. Payment for Change Orders*. No request by the Contractor for an equitable adjustment to the Contract Price under this Article shall be allowed, unless the Contractor has given Notice within the times required.
- 7.3.4. The Contractor waives its right to file claims unless the claims are filed within the times specified in the Agreement Documents. WCIND's final determination shall be final and binding on the Contractor unless the Contractor files suit within thirty (30) days after receipt of WCIND's decision.

### 7.4 Release of Liens or Claims

The Contractor shall indemnify and hold harmless WCIND and the Owner Representative from all claims for labor and materials furnished under the Agreement Documents. Prior to the final payment, the Contractor shall furnish to WCIND, as part of its final Payment Application, a certification that all of the Contractor's obligations on the Project have been satisfied and that all monetary claims and indebtedness have been paid. The Contractor shall furnish releases or waivers, satisfactory to WCIND, from all Subcontractors and Suppliers and

of all liens and notices arising out of or filed in connection with the Work. WCIND may reduce the amount of retainage withheld upon receipt of an affidavit from Contractor identifying any amounts in dispute with Subcontractor or Suppliers, and provided the amount of retainage withheld continues to exceed the amount in dispute.

#### 7.5 Final Payment

- 7.5.1. Upon completion of all of the Work, the Contractor shall provide Notice to the Owner Representative that it has completed its Work and shall request final payment. Upon receipt of such Notice, the Owner Representative, together with WCIND, will inspect and, if acceptable, the Owner Representative will submit to WCIND its recommendation as to acceptance of the Work and as to the final Payment Application of the Contractor. Within sixty (60) Days after the Contractor has submitted its final Payment Application, together with the Sureties' consent to final payment, and upon approval of this Payment Application request by WCIND and compliance by the Contractor with provisions in the General Conditions, *Article 7.4. Release of Liens or Claims*, and all other provisions of the Agreement Documents as may be applicable, WCIND shall pay to the Contractor all monies due it under the provisions of these Agreement Documents. Final payment is further subject to WCIND's receipt from Contractor of all As-Built Drawings, certifications, maintenance manuals, operating instructions, written guarantees and warranties, and bonds relating to the Work, and assignment of all guarantees and warranties from Subcontractors, vendors, Suppliers or manufacturers, all as required by the Agreement Documents.
- 7.5.2. Contractor and WCIND agree that project closeout and release of retainage shall be in accordance with Chapters 218 and 255, Florida Statutes, as amended by Chapter 2023-134, Laws of Florida. Specifically, Contractor shall cooperate with WCIND to prepare a punch-list with estimated costs of items to complete the Work. Within 20 business days of completion of said punch-list, WCIND shall pay Contractor the remaining contract balance, including retainage previously withheld, less an amount equal to 150% of the estimated cost to complete the items on the punch-list, and also less any amounts that are subject to a good faith dispute made in writing to the Contractor by WCIND.

#### 7.6 No Waiver of Rights

Neither the inspection by WCIND or the Owner Representative, nor any payment for or acceptance of the whole or any part of the Work by WCIND or Owner Representative, nor any extension of time, nor any possession taken by WCIND, shall operate as a waiver of any provision of the Agreement Documents, or any right to damages, nor shall such waive any subsequent breach. Acceptance of final payment shall not release Contractor of any liability under the Agreement Documents or otherwise, and shall not be deemed evidence of performance or be construed as acceptance of Defective or improper Work.

#### 7.7 Acceptance of Final Payment Constitutes Release

The acceptance by the Contractor of the final payment shall release WCIND, the Owner Representative, and the Architect/Engineer from all claims and all liability to the Contractor for all things done or furnished in connection with the Work, and every act of WCIND and others relating to or arising out of the Work except claims previously made in writing and identified by Contractor in its final Payment Application as still unsettled. No payment, however, final or otherwise, shall operate to release the Contractor or its Sureties from obligations under the Agreement Documents and the Performance Bonds, Payment Bonds, and other bonds and warranties, as herein provided.

#### 7.8 Record Maintenance and Auditing Rights

Contractor shall keep all books, records, files and other documentation, including all electronically stored items, which concern or relate to the Work hereunder (collectively

referred to herein as the “Records”), for a minimum of three (3) years from the date of expiration or termination of this Contract or the date of Final Completion or as otherwise required by law, whichever date is later. WCIND, or any duly authorized agents or representatives of WCIND, shall have the right to audit, inspect and copy all such Records as often as they deem necessary during any such period of time. This right to audit, inspect and copy Contractor’s Records shall include all of the Records of the Subcontractors and Suppliers.

#### 7.9 Hazardous Materials

If Contractor encounters on the Project site any materials reasonably believed by Contractor to be petroleum or petroleum-related products, or other hazardous or toxic substances which have not been rendered harmless, Contractor immediately shall (i) stop Work in the area affected and (ii) report such condition to WCIND in writing. If the Work is so stopped and hazardous material is found, the Work in the affected area shall not thereafter be resumed except by Change Order. Any such Change Order shall include, but not be limited to, an adjustment to the Contract Time as appropriate. If no hazardous material is found after the Work has stopped, no Change Order is required to resume the Work in the affected area. Further, if the hazardous material was generated or caused by the Contractor, or any of its employees, agents, Subcontractors or Suppliers, no Change Order will be required for an adjustment in the Contract Time, and Contractor shall indemnify WCIND for any costs incurred by WCIND with respect to such hazardous material.

\* \* \* \* \*

End of General Conditions



**INDEX OF EXHIBITS**

Exhibit A - WCIND Bid Documents, Agreement Number 2024-

Addenda(s)  
Final Specifications  
Final Drawings

Exhibit B - Bidder's Response Pages

Bid Price Form  
Signature Form  
Authorized Signatures  
Florida Bid Bond  
E-Verify Affidavit  
Non-Collusion Affidavit  
Human Trafficking Affidavit  
Litigation History  
Major Equipment List  
Major Equipment Manufacturers  
Subcontractors List  
Questionnaire

Exhibit C - Bidder's Certifications/Qualifications

(If appropriate) If there are none, skip this Exhibit

Exhibit D - Performance and Payment Bonds

**Exhibit A**

**WCIND Bid Documents, Agreement Number 2024-013**

- Addenda(s) - One (1); Two (2); and Three (3)
- Construction Bid Documents
- Final Specifications
- Final Drawings

**Exhibit B**

**Bidder's Response Pages**

- Bid Price Form
- Signature Form
- Authorized Signatures
- Florida Bid Bond
- E-Verify Affidavit
- Non-Collusion Affidavit
- Human Trafficking Affidavit
- Litigation History
- Subcontractors List
- Questionnaire

**Exhibit C**

**Bidder's Certifications/Qualifications**

**Exhibit D**

**Performance and Payment Bonds**

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_ as Principal, located at \_\_\_\_\_ (Business Address) and \_\_\_\_\_ as Surety, located at \_\_\_\_\_ (Business Address) are held and firmly bound to the West Coast Inland Navigation District (WCIND), an independent multi-county special tax district of the State of Florida, as Obligee in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

**Whereas,** Principal has entered into a contract dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024, with Obligee for **WCIND District Headquarters Facility Project** in accordance with DRAWINGS and Specifications, which contract is incorporated by reference and made a part hereof, and is referred to as the Contract.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the Contract at the times and in the manner prescribed in the Contract; and
2. Pays Obligee any and all losses, damages, costs and attorneys' fees, including appellate proceedings, that Obligee sustains because of any default by Principal under the Contract including, but not limited to, all delay damages, whether liquidated or actual, suffered by Obligee; and
3. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise, it remains in full force.

BE IT FURTHER KNOWN:

1. Any changes, regardless of scope or amount, in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's obligation under this Bond.
2. The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the Specifications referred to therein shall in anyway affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to work or to the Specifications.
3. This Performance Bond is issued in compliance with the terms and conditions set forth in Florida Statute 255.05; however, it is intended to exceed the minimal coverage requirements established by that statute. The Notice and time limitations of Florida Statute 255.05 (2) are also, to the extent applicable, if any, incorporated herein by reference and made a part hereof.
4. In no event will the Surety be liable in the aggregate to Obligee for more than the penal sum of this Performance Bond regardless of the number of suits that may be filed by Obligee.
5. Whenever the Contractor shall be, and is declared by WCIND to be in default under the Contract, WCIND having performed WCIND's obligations thereunder, the SURETY shall promptly remedy the default, as set forth below and at the sole option of WCIND, by promptly:
  - (a) Completing the Contract in accordance with its terms and conditions and paying WCIND all of its losses, damages, costs and attorneys' and legal assistants' fees, whether at trial, on appeal or in

bankruptcy, that WCIND sustains because of any default by Principal under the Contract including, but not limited to, all delay damages, whether liquidated or actual. In the event Surety takes over and completes the Contract, then in such event it shall be entitled to receive the balance of the Contract Price, as defined in sub-paragraph 2 below; or

(b) Indemnifying WCIND for all of its damages, expenses, costs, delay damages, attorneys' and legal assistant's fees, including appellate and bankruptcy proceedings, that WCIND has incurred, suffered or sustained as a result of WCIND's completion of the Contract or the Principal's default under the Contract, less the remaining unpaid balance of the Contract Price, if any. The term "balance of the Contract Price," as used in this Performance Bond, shall mean the total amount payable by WCIND to the Contractor under the Contract and any amendments thereto, less the amount previously paid by WCIND to the Contractor.

**IN WITNESS WHEREOF**, the above parties have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered in the presence of:

**PRINCIPAL:**

\_\_\_\_\_  
\_\_\_\_\_  
Witnesses as to Principal

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Subscribed and sworn before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification and did (did not) take an oath.

\_\_\_\_\_  
Notary Public Signature

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Print Name

My Commission Expires:

ATTEST:

SURETY:

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name)

**OR**

\_\_\_\_\_  
\_\_\_\_\_  
Witness

\_\_\_\_\_  
Florida Resident Agent and As Attorney in Fact  
(Attach Power of Attorney)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Telephone Number)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Subscribed and sworn before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification and did (did not) take an oath.

\_\_\_\_\_  
Notary Public Signature

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Print Name

My Commission Expires:



**PUBLIC PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_ as Principal, located at \_\_\_\_\_ (Business Address) and \_\_\_\_\_ as Surety, located at \_\_\_\_\_ (Business Address) are held and firmly bound to the West Coast Inland Navigation District (WCIND), an independent multi-county special tax district of the State of Florida, as Obligee in the sum of \_\_\_\_\_ (\$\_\_\_\_\_) for the payment whereof we bind ourselves, our heirs, executors, personal representatives, successors and assigns, jointly and severally.

**Whereas,** Principal has entered into a contract dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024, with Obligee for **WCIND District Headquarters Facility Project** in accordance with DRAWINGS and Specifications, which contract is incorporated by reference and made a part hereof, and is referred to as the Contract.

**THE CONDITION OF THIS BOND** is that if Principal:

1. Promptly makes payment to all claimants as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract; and
2. Pays Obligee all losses, damages, expenses, costs, and attorneys' fees, including appellate proceedings that Obligee sustains because of default by the Principal under paragraph 1 of this bond; then this bond is void; otherwise, it remains in full force.

**BE IT FURTHER KNOWN:**

1. Any changes, regardless of scope or amount, in or under the Contract and compliance or noncompliance with any formalities connected with the Contract or the changes do not affect Surety's obligation under this Bond.
2. The Surety, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or other work to be performed hereunder, or the Specifications referred to therein shall in anyway affect its obligations under this bond, and it does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to work or to the Specifications.
3. This Payment Bond is a statutory payment bond and is not intended to be a common law Payment Bond. This Payment Bond is issued in compliance with the terms and conditions set forth in Florida Statute 255.05. The Notice and time limitations of Florida Statute 255.05 (2) are also expressly incorporated herein by reference and made a part hereof. Any action instituted by a claimant under this bond must be in accordance with the Notice and Time limitations contained in Florida Statute 255.05 (2).

In no event shall the Surety be liable in the aggregate to claimants for more than the penal sum of this Payment Bond, regardless of the number of suits that may be filed by such claimants.

**IN WITNESS WHEREOF**, the above parties have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, 2024, the name of each party being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Signed, sealed and delivered in the presence of:

**PRINCIPAL:**

\_\_\_\_\_  
Witnesses as to Principal

\_\_\_\_\_  
By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Subscribed and sworn before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification and did (did not) take an oath.

\_\_\_\_\_  
Notary Public Signature

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Print Name

My Commission Expires:

**ATTEST:**

**SURETY:**

\_\_\_\_\_  
\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name)

**OR**

\_\_\_\_\_

Florida Resident Agent and As Attorney in Fact

\_\_\_\_\_

(Attach Power of Attorney)

Witness

\_\_\_\_\_

\_\_\_\_\_

(Business Address)

\_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Telephone Number)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Subscribed and sworn before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me **OR** has produced \_\_\_\_\_ as identification and did (did not) take an oath.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Print Name

My Commission Expires:

(AFFIX NOTARY SEAL)