

**STANDARD DESIGN-BUILD CONTRACT
DOCUMENTS**

FOR

**AGREEMENT BETWEEN
THE BOARD OF COUNTY COMMISSIONERS OF
ESCAMBIA COUNTY, FLORIDA**

AND

FORM C: DESIGN-BUILD

(Revised June 2016)

STANDARD CONSTRUCTION CONTRACT DOCUMENTS
FORM C

TABLE OF CONTENTS

Agreement Declarations		PAGE
Sec. 1	Contract Documents	5
Sec. 2	Scope of Work	5
Sec. 3	Contract Amount	9
Sec. 4	Design-Build Firm Fees	9
Sec. 5	Bonds	10
Sec. 6	Contract Time and Liquidated Damages	11
Sec. 7	Exhibits Incorporated	12
Sec. 8	Notices	12
Sec. 9	Modification	13
Sec. 10	Successors and Assigns	13
Sec. 11	Governing Law	13
Sec. 12	No Waiver	13
Sec. 13	Entire Agreement	14
Sec. 14	Severability	14

Exhibits	PAGE
Exhibit A/ General Terms and Conditions	15
1. Intent of Contract Documents	15
2. Investigation and Utilities	16
3. Progress Payments	16
4. Payments Withheld	18
5. Final Payment	18
6. Submittals and Substitutions	18
7. Daily Reports, As-Builts and Meetings	20
8. Contract Time and Time Extensions	21
9. Changes in the Work	22
10. Claims and Disputes	23
11. Other Work	24
12. Indemnification and Insurance	25
13. Compliance with Laws	27
14. Cleanup and Protections	27
15. Assignment	28
16. Permits, Licenses and Taxes	28
17. Termination for Default	28
18. Termination for Convenience and Right of Suspension	30

Exhibits	PAGE
19. Completion	30
20. Warranty	31
21. Tests and Inspections	32
22. Defective Work	32
23. Supervision and Superintendents	34
24. Protection of Work	34
25. Emergencies	34
26. Use of Premises	35
27. Safety	35
28. Project Meetings	36
Exhibit B/Performance and Payment Bond	37
Performance Bond	37
Payment Bond	40
Exhibit C/Insurance and Safety	44
Exhibit D/Release and Affidavit	52
Exhibit E/Form of Contract Application for Payment	54
Exhibit F/Change Order	55

Exhibit G – Owner Direct Purchases- FORM OF0205	57
Exhibit H – Contract Definitions	61
Exhibit I – Design Criteria Package	66
Exhibit J – Schedule of Project Fees	67
Exhibit K – Approved Schematic Designs/Approved Development Documents.	68
Exhibit L – Approved GMP Drawings and Specifications	69
Exhibit M – Pre-Construction Fee Proposal	70
Exhibit N- Design Build Firm Project Personnel Roster	71
Exhibit O- Project Schedule	72
Exhibit P – GMP Amount Detail	73
Exhibit Q – Information Package	74
Exhibit R – If Required	81

AGREEMENT

THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA, ("County") a subdivision of the State of Florida with administrative offices at 221 South Palafox Place, Pensacola, Florida 32502, hereby contracts with _____ ("Design-Build Firm"), a _____ corporation for profit with an address of _____ and Federal Tax Identification Number of _____, to perform all work ("Work") in connection with _____, P.D. __-__-__ ("Project"), as said Work is set forth in the Plans and Specifications furnished by the Design-Build Firm and other Contract Documents hereafter specified.

SECTION 1. CONTRACT DOCUMENTS.

A. The Contract Documents consist of this Agreement, the Amendments and Exhibits described in Section 7 hereof, Change Orders, Work Directive Changes, Field Orders, and the solicitation documents, including addenda relating thereto. All of the foregoing Contract Documents are incorporated by reference and made a part of this Agreement (all of said documents, including this Agreement, sometimes being referred to herein as the "Contract Documents" and sometimes as the "Agreement"). A copy of the Contract Documents shall be maintained by Design-Build Firm at the Project site at all times during the performance of the Work.

B. In case of any inconsistency or conflict among the provisions of the Agreement and any other terms and conditions of any documents comprising the Contract Documents, the provisions of the Agreement shall control. Concerning the Contract Documents, the order of precedence shall be as follows: 1) the Agreement, including Amendments and Exhibits; 2) Change Orders; 3) Work Directive Changes; 4) Field Orders; 5) the Solicitation Documents, including addenda. The Contract Documents listed above represent the entire and integrated agreement between the parties hereto, and supersede prior negotiations, representations, or agreements, either written or oral.

C. County shall furnish to the Design-Build Firm up to three (3) sets of the Contract Documents for execution of the Work. Additional copies of the Contract Documents shall be furnished, upon request, at the cost of reproduction.

SECTION 2. SCOPE OF WORK.

A. Generally, Design-Build Firm will provide all planning, design, and architectural/engineering services required for the proper design and for all other services necessary for the construction of the Project.

B. Design-Build Firm's Responsibility with respect to Design.

1) In fulfilling its obligations under this Section, Design-Build Firm shall employ Architects and Engineers of the appropriate specialties for proper preparation of the Project drawings and specifications, including structural, mechanical, electrical, soils (excepting existing environmental contamination and based upon soil boring reports furnished to Design-Build Firm by County), civil and such other specialties as are reasonably required. All such professional services shall be performed by appropriately State of Florida licensed personnel. Design-Build Firm takes responsibility for the proper performance of such architectural and engineering services.

2) The Design-Build Firm shall prepare and the County shall approve a Pre-Construction Phase schedule as follows:

(a) PHASE 1 - SCHEMATIC DESIGN PHASE

Based upon the County's Project requirements, as set forth in the Design Criteria Package prepared by the County Architect, and set forth in Exhibit I, Schematic Design Studies will be prepared by the Design-Build Firm. These Schematics are for the purpose of assisting the County in determining the feasibility of the Project.

(b) PHASE 2 - DESIGN DEVELOPMENT

Upon approval of Schematic Designs and authorization from the County to proceed, the Design-Build Firm shall prepare Design Development documents to fix the size and character of the Project as to structural, mechanical and electrical systems, materials, and other appropriate essential items in the Project. These Development Documents shall be the basis for the design and construction of the Project. Approved Development Documents shall be incorporated in Exhibit K.

(c) PHASE 3 - WORKING DRAWINGS AND SPECIFICATIONS

From approved Design Development Documents, the Design-Build Firm will prepare working Drawings and Specifications setting forth in detail the requirements for the construction of the Project, and based upon codes, laws, or regulations which have been enacted at the time of their preparation.

3) The Design-Build Firm and the County will work closely together to monitor the design in accordance with prior approvals so as to ensure that the Project can be constructed within the amount as defined in Section 3. As these working Drawings and Specifications are being completed, the Design-Build Firm will keep the County advised of the effects of any County requested changes on the Contract Time Schedule and/or the Guaranteed Maximum Price ("GMP"). Construction of the Project shall be in accordance with these Drawings and Specifications as approved by the County and incorporated in the exhibits. The Drawings and Specifications shall remain the property of the County and may be used by the County on this or other projects without the written consent of the Design-Build Firm.

4) After the completion of any Pre-Construction Phase as set forth above in Subsection 2. B., paragraphs 2) (a), (b), and (c), if the Project is no longer feasible for any reason from the standpoint of the County, the County may terminate this Agreement and pay the Design-Build Firm pursuant to Section 3 "Contract Amount".

C. Responsibilities of Design-Build Firm With Respect to Construction.

1) The Design-Build Firm will provide all construction supervision, inspection, labor, materials, tools, construction equipment, and subcontracted items of every kind and type necessary for the timely execution and full completion of the Project in a good workmanlike manner required by the Contract.

2) The Design-Build Firm will pay all sales, use, gross receipts and similar taxes related to the Work provided by the Design-Build Firm, which have been legally enacted at the time of execution of this Agreement and for which the Design-Build Firm is liable.

3) The Design-Build Firm will prepare and submit for the County's approval an estimated progress schedule for the Project. This schedule shall indicate the dates for the starting and completion of the various stages of the construction. It shall be revised as required by the conditions of the Work and by those conditions and events, which are beyond the Design-Build Firm's control. (Exhibit O)

4) The Design-Build Firm shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The system shall be satisfactory to the County, which shall be afforded access to all of the Design-Build Firm's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. The Design-Build Firm shall preserve all such records for a period of three (3) years after the final payment or longer where required by law. All such records shall be subject to public disclosure under Chapter 119, Florida Statutes, the Florida Public Records Law. Failure to disclose such documents shall result in the termination of this Agreement by the County.

D. Royalties and Patents.

1) The Design-Build Firm shall pay all royalties and license fees for materials, methods, and systems incorporated in the Work. It shall defend all suits or claims for infringement of any patent rights and shall save the County harmless from loss on account thereof except when a particular design process or product is specified by the County. In such case the Design-Build Firm shall be responsible for such loss only if it has reason to believe that the design, process, or product so specified is an infringement of a patent, and fails to give such information promptly to the County.

E. Warranties and Completion.

In addition to the warranty set forth in Section 20, General Conditions:

1) The Design-Build Firm will secure required certificates of inspection, testing, or approval and deliver them to the County.

2) The Design-Build Firm will collect all written warranties and equipment manuals and deliver them to the County.

3) The Design-Build Firm, with the assistance of the County's maintenance personnel, will direct the commissioning of utilities and the operations of the Project's systems and equipment, and will assist in their initial start-up and testing.

SECTION 3. CONTRACT AMOUNT.

In consideration of the faithful performance by Design-Build Firm of the covenants in this Agreement to the full satisfaction and acceptance of County, County agrees to pay, or cause to be paid, to Design-Build Firm in accordance with the terms of this Agreement the following Guaranteed Maximum Price (GMP) amount for the Project (herein "Contract Amount"):

\$ _____.

SECTION 4. DESIGN-BUILD FIRM FEES

A. Pre-Construction Phases Fee. For the performance of the design services set forth herein and for profit and overhead related to these services, a total fee of \$_____ shall be paid to the Design-Build Firm. The Pre-construction Phase Fee for the Project shall be paid in monthly payments of \$_____ each. The first monthly payment shall become due thirty (30) days following the issuance by the County of the Notice To Proceed with the design services for the Project and monthly thereafter based on the project schedule and approval by County of deliverables as set forth in Exhibit M. (Design Fee proposal) and Exhibit J. (Schedule of Project Fees)

The Design-Build Firm's design personnel to be assigned during the Pre-Construction Phases of the Work and their duties, responsibilities, and fee schedule, and the duration of their assignments are shown on Exhibit N, which is incorporated by reference herein. Such personnel shall not be replaced without the prior written consent of the County which shall not unreasonably withhold such consent.

B. Construction Phase Fee. Prior to commencement of the Construction Phase of the Project, the County will direct the Design-Build Firm in writing to proceed with that Construction Phase. The Design-Build Firm's compensation for services performed during the Construction Phase shall be a total fee of \$_____ (However, the County retains the right to review the need and effectiveness of any employee or employees assigned by the Design-Build Firm, should the County question the need for the employee or employees). The Construction Phase Fee shall be paid in monthly payments of \$_____ each and one final monthly payment of \$_____ at the conclusion of the Project. The first monthly payment shall become due thirty (30) days following the issuance of the Construction Phase Notice to Proceed by the County and the final monthly payment shall be paid only when construction of the Project is finally completed and occupancy of is accepted by the County. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the County. The construction phase fee shall be negotiated based on the Design and the negotiated fee and supporting documentation shall be incorporated in Exhibit J (Schedule of Project Fees)

Design-Build Firm's Exclusive Remedy: In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the County, or is attributable to the County, the Design-Build Firm's sole and exclusive remedy is an extension of the construction completion date.

C. Overhead And Profit For the Construction Phase. For overhead, profit, and general expenses of any kind for services provided during and related to the Construction Phase of the Project, the fee shall be \$ _____, and shall be paid proportionally to the ratio of the cost of the Work in place, and less retainage as it bears on the latest estimate of the total construction cost or to the GMP or to the County's Construction Budget, whichever is less. The balance of the fee shall be paid when construction of the Project is finally completed and occupancy of the Project accepted by the County as provided in this Agreement. If construction is authorized only for a part of a phase of the Project, the fee paid shall be proportionate to the amount of Work authorized by the County. The Overhead and Profit for the Construction Phase shall be negotiated based on the design and set forth in Exhibit J (Schedule of Project Fees).

SECTION 5. BONDS

A. Design-Build Firm shall provide Performance and Payment Bonds, in the form prescribed in Exhibit B, in the amount of one hundred percent (100%) of the Contract Amount, the costs of which to be paid by Design-Build Firm. The Performance and Payment Bonds shall be underwritten by a surety authorized to do business in the State of Florida and otherwise acceptable to County; provided; however, the surety shall be rated as "A-" (excellent) or better and Class "V" or higher rating as to financial size category and the amount required shall not exceed two percent (2%) of the reported policy holders surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038.

B. If the surety for any bond furnished by Design-Build Firm is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by the Contract Document, the Design-Build Firm shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the County's approval. Failure by the Design-Build Firm to maintain its bonds in full force and effect at all times, including the warranty period, shall be grounds for termination of this Contract.

C. Per §255.05, Florida Statutes, the Design-Build Firm shall be required to execute and record the Performance and Payment bonds. The bonds must state the name and principal business address of both the Principal and the Surety and a description of the Project sufficient to identify it. (The filing costs are ten dollars (\$10.00) for the first page and eight dollars and fifty cents (\$8.50) for each remaining page).

SECTION 6. CONTRACT TIME AND LIQUIDATED DAMAGES

A. Time is of the essence in the performance of the Work under this Agreement. Design-Build Firm shall commence the Work within ten (10) calendar days from the Commencement Date, established in each Phase's Notice to Proceed. No Work shall be performed at the Project site prior to such Commencement Dates. Design-Build Firm shall provide forty-eight (48) hours notice prior to beginning the Work. The Work shall be substantially completed within _____ () calendar days from the Commencement Date. The Work shall be fully completed and deemed ready by the County for final completion within _____ () calendar days from the Substantial Completion Date. The Contract Time shall be the time period from the Commencement Date to the date of final completion totaling _____ () calendar days (herein "Contract Time").

B. County and Design-Build Firm recognize that, since time is of the essence for this Agreement, the County will suffer financial loss if the Work is not substantially completed within the time specified. Should Design-Build Firm fail to substantially complete the Work within the time period noted above, County shall be entitled to assess, as liquidated damages, but not as a penalty, \$_____ for each calendar day thereafter until Substantial Completion is achieved. The Project shall be deemed to be substantially completed by the County on the date that the County's Architect certifies in writing that the construction of the Project, or specified part thereof, is sufficiently completed in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it is intended. Along with such certification, the Architect shall compile a "punch list" of any remaining exceptions that do not adversely affect the use of the Project. Completion of these items will be required prior to final payment as provided herein.

C. Design-Build Firm hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of the County's actual damages at the time of contracting if Design-Build Firm fails to substantially complete the Work in accordance with the progress schedule.

D. When any period of time is referenced to by days herein, it shall be computed to exclude the first day and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation, and the last day shall become the next succeeding day which is not a Saturday, Sunday or legal holiday.

SECTION 7. EXHIBITS INCORPORATED

The following documents are expressly agreed to be incorporated by reference and made a part of this Agreement.

- Exhibit A: General Terms and Conditions
- Exhibit B: Form of Performance and Payment Bonds
- Exhibit C: Insurance Requirements
- Exhibit D: Form of Release and Affidavit
- Exhibit E: Form of Application for Payment
- Exhibit F: Form of Change Order
- Exhibit G: Owner Direct Purchases- FORM OF0205 (if applicable)
- Exhibit H: Contract Definitions
- Exhibit I: Design Criteria Package
- Exhibit J: Schedule of Project Fees
- Exhibit K: Approved schematic Designs/Development Documents
- Exhibit L: Approved GMP Construction Drawings and Specifications
- Exhibit M: Pre-Construction Fee proposal
- Exhibit N: Design-Build Firm Project Personnel Roster
- Exhibit O: Project Schedule
- Exhibit P: GMP Amount Detail
- Exhibit Q: Information Package
- Exhibit R: If Required

SECTION 8. NOTICES

A. All notices required or made pursuant to this Agreement by the Design-Build Firm to the County shall be in writing and delivered by hand or by United States Postal Service Department, first class mail, postage pre-paid, return receipt requested, addressed to the following:

Attention: _____

B. All notices required or made pursuant to this Agreement by County to Design-Build Firm shall be made in writing and shall be delivered by hand or by United States Postal Service Department, first class mail, postage pre-paid, return receipt requested, addressed to the following:

Attention: _____

C. Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

SECTION 9. MODIFICATION

No modification or change to the Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

SECTION 10. SUCCESSORS AND ASSIGNS

Subject to other provisions hereof, the Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to the Agreement.

SECTION 11. GOVERNING LAW

The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida, and the Parties stipulate venue for matters relating to the subject of this Agreement shall be in the County of Escambia.

SECTION 12. NO WAIVER

The failure of the County to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

SECTION 13. ENTIRE AGREEMENT

Each of the Parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by the Agreement.

SECTION 14. SEVERABILITY

Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

SECTION 15. PUBLIC RECORDS.

The Contractor acknowledges that this Agreement and any related financial records, audits, reports, plans correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes. Contractor shall maintain all such public records and, upon request, provide a copy of the requested records or allow the records to be inspected within a reasonable time. Contractor shall also ensure that any public records that are exempt or exempt and confidential from disclosure are not disclosed except as authorized by law. Upon the expiration or termination of the Agreement, Contractor agrees to maintain all public records for a minimum period of five (5) fiscal years in accordance with the applicable records retention schedules established by the Florida Department of State. In the event the Contractor fails to abide by the provisions of Chapter 119, Florida Statutes, the County may, without prejudice to any other right or remedy and after giving the Contractor and surety, if any, seven days written notice, during which period the Contractor still fails to allow access to such documents, terminate the contract. In such case, the Contractor shall not be entitled to receive any further payment. Reasonable terminal expenses incurred by the County may be deducted from any payments left owing the Contractor (excluding monies owed the Contractor for subcontractor work).

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Escambia County
Office of the County Administrator
221 Palafox Place, Suite 420
Pensacola, Florida 32502
(850) 595-4947

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: Escambia County, Florida through its Board of County Commissioners, signing by its County Administrator, duly authorized to execute this Agreement, and _____ signing by and through its President, duly authorized to execute same.

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners.

WITNESS: _____

By: _____
County Administrator

WITNESS: _____

Date: _____

BCC Approved (DATE) _____

DESIGN-BUILD FIRM:

ATTEST: Corporate Secretary

By: _____
(Name)

By: _____
Secretary

Its: President

[CORPORATE SEAL]

Date: _____

EXHIBIT "A"

GENERAL TERMS AND CONDITIONS

1. INTENT OF CONTRACT DOCUMENTS

1.1. It is the intent of the Contract Documents to describe a functionally complete project (or portion thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein.

1.2. If during the performance of the Work Design-Build Firm discovers a conflict, error or discrepancy in the Contract Documents, Design-Build Firm immediately shall report same to the County in writing and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from the Design-Build Firm's Architect/Engineer. Design-Build Firm shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Design-Build Firm with the Contract Documents before commencing any portion of the Work.

1.3. Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as shop drawings. Specifications are separated into divisions for convenience of reference only and shall not be interpreted as establishing divisions for the Work, trades, subcontracts, or extent of any part of the Work. In the event of a discrepancy between or among the drawings, specifications of other Contract Document provisions, Design-Build Firm shall be required to comply with the provision which is the more restrictive or stringent requirement upon the Design-Build Firm, as determined by its Architect/Engineer. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, trim and other parts required in connection with any portion of the Work to make a complete, serviceable, finished and first quality installation shall be furnished and installed as part of the Work, whether or not called for by the Contract Documents.

2. INVESTIGATION AND UTILITIES

2.1 Design-Build Firm shall have the sole responsibility of satisfying itself concerning the nature and location of the Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability and quality of labor; water and electric power; availability and condition of roads; work area; living facilities; climatic conditions and seasons; physical conditions at the work-site and the Project area as a whole; topography and ground surface conditions; nature and quality of the surface materials to be encountered; equipment and facilities needed preliminary to and during performance of the Work; and all other costs associated with such performance. The failure of Design-Build Firm to acquaint itself with any applicable conditions shall not relieve Design-Build Firm from any of its responsibilities to perform under the Contract Documents, nor shall it be considered the basis for any claim for additional time or compensation.

2.2 Design-Build Firm shall locate all existing roadways, railways, drainage facilities and utility services above, upon, or under the Project site, said roadways, railways, drainage facilities and utilities being referred to in this Section 2 as the "Utilities". Design-Build Firm shall contact the owners of all Utilities to determine the necessity for relocating or temporarily interrupting any Utilities during the construction of the Project. Design-Build Firm shall schedule and coordinate its Work around any such relocation or temporary service interruption. Design-Build Firm shall be responsible for properly shoring, supporting and protecting all Utilities at all times during the course of the Work.

3. PROGRESS PAYMENTS FOR CONSTRUCTION PHASE

3.1 Prior to submitting its first Application for Payment, Design-Build Firm shall submit to County, for its review and approval, a schedule of values based upon the Contract Price, listing the major elements of the Work and the dollar value for each element. After its approval by the County, this schedule of values shall be used as the basis for the Design-Build Firm's Applications for Payment. This schedule shall be updated and submitted along with a completed and notarized copy of the Application for Payment form attached to the Agreement as Exhibit E.

3.2 Prior to submitting its first Monthly Application for Payment, Design-Build Firm shall submit to County a complete list of all its proposed subcontractors and materialmen, showing the work and materials involved and the dollar amount of each proposed subcontract and purchase order. The first Application for Payment shall be submitted no earlier than thirty (30) days after Commencement Date of construction.

3.3 If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored at the site or at another location agreed to by the County in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that upon payment by County, the County shall receive the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect County's interest therein, all of which shall be subject to the County's prior written approval.

3.4 Design-Build Firm shall submit three (3) copies of each of its Applications for Payment to the County on or before the 25th day of each month for work performed during the

previous month. Invoices received after the 25th day of each month shall be considered for payment as part of the next month's application. Within ten (10) calendar days after receipt of each Application for Payment, the County shall either: (1) indicate approval of the requested payment; (2) indicate approval of only a portion of the requested payment, stating in writing the reasons therefore; or (3) return the Application for Payment to the Design-Build Firm indicating, in writing, the reason for refusing to approve payment. In the event of a total or partial denial of the Application for Payment, the Design-Build Firm may make the necessary corrections and resubmit the Application for Payment for reconsideration within ten (10) calendar days of receiving notice of refusal.

If re-submittal of the Application for Payment is refused, in whole or in part, the Design-Build Firm may submit a written request to the County Administrator for an administrative decision within two (2) business days of receiving notice of refusal. Upon receiving a timely request, an administrative decision shall be rendered within ten (10) calendar days with written notification provided to the Design-Build Firm.

If the administrative decision is disputed, the Design-Build Firm may submit a written request to the County Administrator for an administrative hearing before the Dispute Resolution Committee (DRC) within two (2) business days of receiving said decision. A hearing shall be scheduled within ten (10) business days from the date the request is received, and the Design-Build Firm will receive written notice of the hearing date. The DRC may, within its discretion, render a final decision at the hearing or may elect to mail a written decision within a period not to exceed ten (10) calendar days from the hearing date. The DRC's written decision shall be considered administratively final.

The County shall, within twenty (20) business days after County approval of an Application for Payment, pay the Design-Build Firm the amounts so approved. Provided, however, in no event shall the County be obligated to pay an amount greater than that portion of the Application for Payment approved by the County.

3.5. Except for applications for payment for work performed pursuant to Section 2.A. of the Agreement, relating to the Design Phase, County shall retain ten percent (10%) of the gross amount of each monthly payment request or ten percent (10%) of the portion thereof approved by the County for payment, whichever is less, up to fifty percent (50%) completion. Thereafter, if on schedule, the County shall retain five percent (5%) of the gross amount of each payment request. Such sum shall be accumulated and not released to Design-Build Firm until final payment is due. Any interim interest on such sums shall accrue to County.

Due to circumstances beyond the Contractor's control and at the County's sole discretion, a percentage of the amount retained from the gross amount of each monthly payment may be reduced prior to final completion of the Project and said percentage released to the Contractor upon receiving a certificate of substantial completion and approval from the Architect/Engineer. Release of any portion or percentage of sums retained prior to final completion of the Project shall in no way imply approval or acceptance of Contractor's work.

3.6. Monthly payments to Design-Build Firm shall in no way imply approval or acceptance of Design-Build Firm's work.

3.7. Each Application for Payment shall be accompanied by Release and Affidavit, in

the form attached as Exhibit D, showing that all materials, labor, equipment and other bills associated with that portion of the Work payment is being requested or have been paid in full. The County shall not be required to make payment until and unless these affidavits are furnished by Design-Build Firm.

4. PAYMENTS WITHHELD

4.1. The County may decline to approve any Application for Payment, or portions thereof, because of subsequently discovered evidence or subsequent inspections. The County may nullify the whole or any part of any approval for payment previously issued and County may withhold any payments otherwise due Design-Build Firm under this Agreement or any other agreement between County and Design-Build Firm, to such extent as may be necessary in the County's opinion to protect it from loss because of: (a) defective Work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of Design-Build Firm to make payment properly to subcontractors or for labor, materials or equipment; (d) reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount; (e) reasonable indication that the Work will not be completed within the Contract Time; (f) unsatisfactory prosecution of the Work by the Design-Build Firm; or (g) any other material breach of the Contract Documents. If these conditions are not remedied or removed, County may, after three (3) days written notice, rectify the same at Design-Build Firm's expense. County also may offset against any sums due Design-Build Firm the amount of any liquidated or un-liquidated obligations of Design-Build Firm to County, whether relating to or arising out of this Agreement or any other agreement between Design-Build Firm and County.

5. FINAL PAYMENT

5.1. County shall make final payment to Design-Build Firm within thirty (30) calendar days after the Work is finally inspected and accepted by County in accordance with Section 19.1 herein provided.

5.2. Design-Build Firm's acceptance of final payment shall constitute a full waiver of any and all claims by Design-Build Firm against County arising out of this Agreement or otherwise relating to the Project, except those previously made in writing and identified by Design-Build Firm as unsettled at the time of the final Application for Payment. Neither the acceptance of the Work nor payment by County shall be deemed to be a waiver of County's right to enforce any obligations of Design-Build Firm hereunder or to the recovery of damages for defective Work not discovered by the County at the time of final inspection.

6. SUBMITTALS AND SUBSTITUTIONS

6.1. Design-Build Firm shall carefully examine the Contract Documents for all requirements for approval of materials to be submitted such as shop drawings, data, test results, schedules and samples. Design-Build Firm shall submit all such materials at its own expense and in such form as required by the Contract Documents in sufficient time to prevent any delay in the delivery of such materials and the installation thereof.

6.2. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other suppliers may be accepted by County if sufficient information is submitted by Design-Build Firm to allow the County to determine that the material or equipment proposed is equivalent or equal to that named. Requests for review of substitute items of material and equipment will not be accepted by County from anyone other than Design-Build Firm and all such requests must be submitted by Design-Build Firm to County within thirty (30) calendar days after Notice of Award is received by Design-Build Firm.

6.3. If Design-Build Firm wishes to furnish or use a substitute item of material or equipment, Design-Build Firm shall make application to the County for acceptance thereof, certifying that the proposed substitute shall perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application shall state that the evaluation and acceptance of the proposed substitute will not prejudice Design-Build Firm's achievement of substantial completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with County for the Project) to adapt the design to the proposed substitute and whether or not incorporation or use by the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service shall be indicated. The application also shall contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs for redesign and claims of other Design-Build Firms affected by the resulting change, all of which shall be considered by the County in evaluating the proposed substitute. The County may require Design-Build Firm to furnish at Design-Build Firm's expense additional data about the proposed substitute.

6.4. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Design-Build Firm may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the County, if Design-Build Firm submits sufficient information to allow the County to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedures for submission to and review by the County shall be the same as those provided herein for substitute materials and equipment.

6.5. The County shall be allowed a reasonable time within which to evaluate each proposed substitute. The County shall be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the County's prior written acceptance which shall be evidenced by either a Change Order or an approved Shop Drawing. The County may require Design-Build Firm to furnish at Design-Build Firm's expense a special performance guarantee or other surety with respect to any substitute.

7. DAILY REPORTS, AS-BUILTS AND MEETINGS

7.1. Unless waived in writing by County, during the Construction Phase, Design-Build Firm shall complete and submit to the County on a weekly basis a daily log of the Design-Build Firm's work for the preceding week in a format approved by the County. The daily log shall document all activities of Design-Build Firm at the Project site including, but not limited to, the following:

- 7.1.1. Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the Project site, and any other weather conditions which adversely affect the Work;
- 7.1.2. Soil conditions which adversely affect the Work;
- 7.1.3. The hours of operation by Design-Build Firm's and subcontractor's personnel;
- 7.1.4. The number of Design-Build Firm's and subcontractor's personnel present and working at the Project site, by subcontract and trade;
- 7.1.5. All equipment present at the Project site, description of equipment use and designation of time equipment was used (specifically indicating any down time);
- 7.1.6. Description of Work being performed at the Project site;
- 7.1.7. Any unusual or special occurrences at the Project site;
- 7.1.8. Materials received at the Project site; and
- 7.1.9. A list of all visitors to the Project site.

The daily log shall not constitute nor take the place of any notice required to be given by Design-Build Firm to County pursuant to the Contract Documents.

7.2. Design-Build Firm shall maintain in a safe place at the Project site one record copy of the Contract Documents, as well as all shop drawings and other Design-Build Firm submittals and all written interpretations and clarifications issued by the County, in good order and annotated to show all changes made during construction. The annotated drawings shall be continuously updated by the Design-Build Firm throughout the prosecution of the Work to accurately reflect all field changes that are made to adapt the Work to field conditions, changes resulting from Change Orders, Work Directive Changes and Field Orders, and all concealed and buried installations of piping, conduit and utility services. All buried and concealed items, both inside and outside the Project site, shall be accurately located on the annotated drawings as to depth and in relationship to not less than two (2) permanent features (e.g. interior or exterior wall faces). The annotated drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color. The "As-Built" record documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to County for reference. Upon completion of the Work, and as a condition precedent to Design-Build Firm's entitlement to final payment, these "As-Built" record documents, samples and shop drawings shall be delivered to County by Design-Build Firm for County.

7.3. Design-Build Firm shall keep all records and supporting documentation which concern or relate to the Work hereunder for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. County, or any duly authorized agents or representatives of County, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

8. CONTRACT TIME AND TIME EXTENSIONS

8.1. Design-Build Firm shall diligently pursue the completion of the Work and coordinate the Work being done on the Project by its Architect/Engineer, subcontractors and materialmen, as well as coordinating its Work with all work of others at the Project Site, so that its Work or the work of others shall not be delayed or impaired by any act or omission of Design-Build Firm. Design-Build Firm shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the Work under the Contract Documents.

8.2. Should Design-Build Firm be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Design-Build Firm, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulations, strikes or lockouts, Design-Build Firm shall notify the County in writing within forty-eight (48) hours after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Design-Build Firm may have had to request a time extension.

8.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which County may be responsible, in whole or in part, shall relieve Design-Build Firm of its duty to perform or give rise to any right to damages or additional compensation from County. Design-Build Firm expressly acknowledges and agrees that it shall receive no damages for delay. Design-Build Firm's sole remedy, if any, against County will be the right to seek an extension to the Contract Time; 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.

9. CHANGES IN THE WORK

9.1. County shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Design-Build Firm shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or as expressly set forth herein, no addition or changes to the Work shall be made except upon written order of County, and County shall not be liable to the Design-Build Firm for any increased compensation without such written order. No officer, employee or agent of County is authorized to direct any extra or changed work orally.

9.2. A Change Order, in the form attached as Exhibit F to this Agreement, shall be issued and executed promptly after an agreement is reached between Design-Build Firm and County concerning the requested changes. Design-Build Firm shall promptly perform changes authorized by duly executed Change Orders. The Contract Amount shall be adjusted in the Change Order in the manner as County and Design-Build Firm shall mutually agree.

9.3. If County and Design-Build Firm are unable to agree on a Change Order for the requested change, Design-Build Firm shall, nevertheless, promptly perform the change as directed by County in a written Work Directive Change. In that event, the Contract Amount and Contract Time shall be adjusted as directed by County. If Design-Build Firm disagrees with the County's adjustment determination, Design-Build Firm must make a claim pursuant to Section 10 of these General Conditions or else be deemed to have waived any claim on this matter it might otherwise have had.

9.4. In the event a requested change results in an increase to the Contract Amount, as to design the amount of the increase shall be based upon the standard hourly billing rates, according to classification of the Design-Build Firm's Architect/Engineer plus expenses to be charged at actual cost. As to the construction, the amount of the increase shall be limited to the Design-Build Firm's reasonable direct labor and material costs and reasonable actual equipment costs as a result of the change (including allowance for labor burden costs) plus a maximum ten percent (10%) markup for all overhead and profit. In the event such change Work is performed by a Subcontractor, a maximum ten percent (10%) markup for all overhead and profit for all Subcontractors' and sub-subcontractors' direct labor and material costs and actual equipment costs shall be permitted, with a maximum five percent (5%) markup thereon by the Design-Build Firm for all of its overhead and profit, for a total maximum markup of fifteen percent (15%). All compensation due Design-Build Firm and any Subcontractor or sub-subcontractor for field and home office overhead is included in the markups noted above.

9.5. County shall have the right to conduct an audit of Design-Build Firm's books and

records to verify the accuracy of the Design-Build Firm's claim with respect to Design-Build Firm's costs associated with any Change Order.

9.6. The County shall have authority to order minor changes in the Work not involving an adjustment to the Contract Amount and not inconsistent with the intent of the Contract Documents. Such changes may be affected by Field Order or by other written order. Such changes shall be binding on the Design-Build Firm.

10. CLAIMS AND DISPUTES

10.1. A Claim is a demand or assertion by one of the parties seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between County and Design-Build Firm arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim shall rest with the party making the Claim.

10.2. Claims by the Design-Build Firm shall be made in writing to the County within forty-eight (48) hours after the first day of the event giving rise to such Claim or else the Design-Build Firm shall be deemed to have waived the Claim. Written supporting data shall be submitted to the County within fifteen (15) calendar days after the occurrence of the event, unless the County grants additional time in writing, or else the Design-Build Firm shall be deemed to have waived the Claim. All claims shall be priced in accordance with the provisions of Subsection 9.4.

10.3. The Design-Build Firm shall proceed diligently with its performance as directed by the County, regardless of any pending Claim, action, suit or administrative proceeding, unless otherwise agreed to by the County in writing. County shall continue to make payments in accordance with the Contract Documents during the pendency of any Claim.

11. OTHER WORK

11.1. County may perform other work related to the Project at the site by County's own forces, have other work performed by utility owners or let other direct contracts. If the fact that such other work is to be performed is not noted in the Contract Documents, notice thereof will be given to Design-Build Firm. If Design-Build Firm believes that such performance will involve additional expense to Design-Build Firm or require additional time, Design-Build Firm shall send written notice of that fact to County within forty-eight (48) hours of being notified of the other work. If the Design-Build Firm fails to send the above required forty-eight (48) hour notice, the Design-Build Firm will be deemed to have waived any rights it otherwise may have had to seek an extension to the Contract Time or adjustment to the Contract Amount.

11.2. Design-Build Firm shall afford each utility owner and other Design-Build Firm (or County, if County is performing the additional work with County's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work and shall properly connect and coordinate its Work with theirs. Design-Build Firm shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design-Build Firm shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the County and the others whose work will be affected.

11.3. If any part of Design-Build Firm's Work depends for proper execution or results upon the work of any other Design-Build Firm or utility owner (or County), Design-Build Firm shall inspect and promptly report to County in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Design-Build Firm's failure to report will constitute an acceptance of the other work as fit and proper for integration with Design-Build Firm's Work.

12. INDEMNIFICATION AND INSURANCE

12.1. Design-Build Firm shall pay on behalf of or indemnify and hold harmless the County and its, agents, officers and employees from all liabilities, damages, losses, and costs, including attorneys' and paralegal fees, incurred by County to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Design-Build Firm or by any person, firm or corporation (including but not limited to the Architect/Engineer) to whom any portion of the Work is subcontracted by Design-Build Firm or resulting from the use by Design-Build Firm, or by any one for whom Design-Build Firm is legally liable, of any materials, tools, machinery or other property of County. Design-Build Firm's obligation as provided herein shall be limited to its proportionate share of liability to the extent caused by the negligence, recklessness or intentional wrongful misconduct of Design-Build Firm or by any person, firm or corporation to whom any portion of the Work is subcontracted by Design-Build Firm, and Design-Build Firm shall not be required to pay on behalf of or indemnify and hold harmless County where County's negligence, recklessness or intentional wrongful misconduct is determined by a court of competent jurisdiction to be the sole cause of its liabilities, damages, losses and costs, including attorney's fees and paralegal fees.

County and Design-Build Firm agree one percent (1%) of the Contract Amount paid by County to Design-Build Firm shall be given as separate consideration for this indemnification, and any other indemnification of County by Design-Build Firm provided for within the Contract Documents, the sufficiency of such separate consideration being acknowledged by Design-Build Firm by Design-Build Firm's acceptance and execution of the Agreement.

Design Build Firm agrees that such indemnification by Design Build Firm relating to any matter which is the subject of this Agreement shall extend throughout the term of this Agreement and any applicable statutes of limitations thereafter. The Design-Build Firm's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

12.2. Design-Build Firm shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit C to the Agreement. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies or trusts which are registered with the State of Florida. Foreign or off-shore insurance carriers are not acceptable for work under this contract unless admitted to the State of Florida. All commercial insurance carriers providing the Design-Build Firm with required insurance shall be rated with a minimum financial size category of VII according to the AM Best Rating Guide, latest edition. An A or better Best Rating is "preferred"; however, other ratings if "Secure Best Ratings" may be considered. Within ten (10) calendar days after Notice of Award is received by Design-Build Firm and prior to the commencement of work, Design-Build Firm shall provide County with properly executed Certificates of Insurance to evidence Design-Build Firm's compliance with the insurance requirements of the Contract Documents. Said Certificates of

Insurance shall be on forms approved by County, such as "Acord Form 25". The Certificates of Insurance shall be personally, manually signed by the authorized representatives of the insurance company/companies shown on the Certificates of Insurance, with proof that they are authorized representatives thereof. Certificates of Insurance shall be mailed to Escambia County in care of: Purchasing Manager, Office of Purchasing, P.O. Box 1591, Pensacola, Florida 32597-1591. In addition, certified, true and exact copies of all insurance policies required hereunder shall be provided to County, on a timely basis, when requested by County.

12.3. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice by registered or certified mail shall be given County of any cancellation, intent not to renew, or reduction in the policies or coverages, except in the application of the aggregate limits provisions. In the event of a reduction in the aggregate limit of any policy, Design-Build Firm shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy.

12.4. All insurance coverages of the Design-Build Firm shall be primary to any insurance or self insurance program carried by the County applicable to this Project. The acceptance by County of any Certificate of Insurance does not constitute approval or agreement by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with the requirements of the Contract Documents. No work shall commence at the Project site unless and until the required Certificates of Insurance are received by the County.

12.5. Design-Build Firm shall require each of its subcontractors to procure and maintain, until the completion of the subcontractor's work, insurance of the types and to the limits specified in **Exhibit C**, unless such insurance requirements for the subcontractor is expressly waived in writing by the County. All liability insurance policies, other than professional liability, worker's compensation and employer's liability policies, obtained by Design-Build Firm to meet the requirements of the Contract Documents shall name Escambia County as an additional insured and shall contain severability of interest provisions. Escambia County shall also be designated as certificate holder with the address of P. O. Box 1591, Pensacola, Florida 32597-1591. If any insurance provided pursuant to the Contract Documents expires prior to the completion of the Work, renewal Certificates of Insurance and, if requested by County, certified, true copies of the renewal policies, shall be furnished by Design-Build Firm within thirty (30) days prior to the date of expiration. Upon expiration of an insurance policy term during the course of work under the contract, succeeding insurance policies shall be consecutive to the expiring policy.

12.6 All liability policies shall be underwritten on the "occurrence" basis, unless otherwise approved in writing by the County Division of Risk Management. "Claims made" policies, if approved by the Risk Manager, and subsequent insurance certificates shall provide a "retro-date" which shall include the effective date of the contract. "Claims-made" renewals or carrier and policy replacements shall reflect the original "retro-date."

12.7. Should at any time the Design-Build Firm not maintain the insurance coverages required herein, the County may terminate the Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the Design-Build Firm for such coverages purchased. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract Documents.

12.8 Design-Build Firm shall submit to County a copy of all accident reports arising out of any personal injuries or property damages arising or alleged to have arisen on account of any work by Design-Build Firm or sub-Contractor under the contract documents.

12.9 Duty to Provide Legal Defense. To the extent permitted by law, the Design-Build Firm shall pay for and provide a legal defense for County, which shall include attorneys' fees and costs, both of which will be done only if and when requested by County, for all liabilities, damages, losses, and costs as described in paragraph 12.1 above. Such payment on the behalf of the County shall be in addition to any and all other legal remedies available to the County and shall not be considered to be the County's exclusive remedy.

13. COMPLIANCE WITH LAWS

13.1 Design-Build Firm agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to the Project, including but not limited to those dealing with taxation, worker's compensation, equal employment and safety. If Design-Build Firm observes that the Contract Documents are at variance therewith, it shall promptly notify County in writing. Compliance with the above laws shall include but is not limited to: (1) the Occupational Safety and Health Act, 29 CFR 1910 and 1926, respectively, General Industry Standards and Construction Industry Standards, including regulations regarding Trenching and Shoring; (2) the Florida Workers' Compensation Law, Chapter 440, Florida Statutes; (3) Rules 38F and 38I, Florida Administrative Code; and (4) Florida Department of Transportation Manual of Traffic Control and Safe Practices. Failure to adhere to the requirements of the above named laws and regulations regarding safety and traffic control shall be grounds for an immediate work stoppage, either by County staff or the Design-Build Firm, until the deficiency is corrected.

13.2 EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY): In accordance with State of Florida, Office of the Governor, Executive Order 11-116 (superseding Executive Order 11-02; Verification of Employment Status), in the event performance of this Agreement is or will be funded using state or federal funds, the CONTRACTOR must comply with the Employment Eligibility Verification Program ("E-Verify Program") developed by the federal government to verify the eligibility of individuals to work in the United States and 48 CFR 52.222-54 (as amended) is incorporated herein by reference. If applicable, in accordance with Subpart 22.18 of the Federal Acquisition Register, the CONTRACTOR must (1) enroll in the E-Verify Program, (2) use E-Verify to verify the employment eligibility of all new hires working in the United States, except if the CONTRACTOR is a state or local government, the CONTRACTOR may choose to verify only new hires assigned to the Agreement; (3) use E-Verify to verify the employment eligibility of all employees assigned to the Agreement; and (4) include these requirement in certain subcontracts, such as construction. Information on registration for and use of the E-Verify Program can be obtained via the internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

14. CLEANUP AND PROTECTIONS

14.1. Design-Build Firm agrees to keep the Project site clean at all times of debris, rubbish and waste materials arising out of the Work. At the completion of the Work, Design-Build Firm shall remove all debris, rubbish and waste materials from and about the Project site, as well as all tools, appliances, construction equipment and machinery and surface materials, and shall leave the Project site clean and ready for occupancy by County.

14.2. Any existing surface or subsurface improvements, including, but not limited to, pavements, curbs, sidewalks, pipes, utilities, footings, structures, trees and shrubbery, not indicated in the Contract Documents to be removed or altered, shall be protected by Design-Build Firm from damage during the prosecution of the Work. Any such improvements so damaged shall be restored by Design-Build Firm to the condition equal to that existing at the time of Design-Build Firm's commencement of the Work.

15. ASSIGNMENT

15.1. Design-Build Firm shall not assign this Agreement or any part thereof, without the prior consent in writing of County. If Design-Build Firm does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Design-Build Firm all of the obligations and responsibilities that Design-Build Firm has assumed toward County.

16. PERMITS, LICENSES AND TAXES

16.1. All permits and licenses necessary for the prosecution of the Work shall be procured and paid for by Design-Build Firm. All permits or fees, including but not limited to, all license fees, permit fees, impact fees or inspection fees payable by Design-Build Firm to County have been disclosed to Design-Build Firm in the bidding documents or other request for proposal at the time the Project was let for bid. If Design-Build Firm performs any Work without obtaining, or contrary to, such permits or licenses, Design-Build Firm shall bear all costs arising therefrom. Design-Build Firm shall pay all governmental charges and inspection fees necessary for the prosecution of the Work.

16.2. Design-Build Firm shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work.

17. TERMINATION FOR DEFAULT

17.1. Design-Build Firm shall be considered in material default of the Agreement and such default shall be considered cause for County to terminate the Agreement, in whole or in part, as further set forth in this Section, if Design-Build Firm: (1) fails to begin the Work under the Contract Documents within the time specified herein; or (2) fails to properly and timely perform the Work as directed by the County or as provided for in the approved Progress Schedule; or (3) commits errors or omissions in the performance of the architectural/engineering design or inspection services; or (4) performs the Work unsuitably or neglects or refuses to remove materials or to correct or replace such Work as may be rejected as unacceptable or unsuitable; or (5) discontinues the prosecution of the Work; or (6) fails to resume Work which has been suspended within a reasonable time after being notified to do so; or (7) becomes insolvent or is declared bankrupt, or commits any act of bankruptcy; or (8) allows any final judgment to stand against it unsatisfied for more than ten (10) days; or (9) makes an assignment for the benefit of creditors; or (10) fails to obey any applicable codes, laws, ordinances, rules or regulations with respect to the Work; or (11) materially breaches any other provision of the Contract Documents.

17.2. County shall notify Design-Build Firm in writing of Design-Build Firm's default(s). If County determines that Design-Build Firm has not remedied and cured the default(s) within seven (7) calendar days following receipt by Design-Build Firm of said written notice, then County, at its option, without releasing or waiving its rights and remedies against the Design-Build Firm's sureties and without prejudice to any other right or remedy it may be entitled to hereunder or by law, may terminate Design-Build Firm's right to proceed under the Agreement, in whole or in part, and take possession of all or any portion of the Work and any materials, tools, equipment, and appliances of Design-Build Firm, take assignments of any of Design-Build Firm's subcontracts and purchase orders, and complete all or any portion of Design-Build Firm's Work by whatever means, method or agency which County, in its sole discretion, may choose.

17.3. If County deems any of the foregoing remedies necessary, Design-Build Firm agrees that it shall not be entitled to receive any further payments hereunder until after the Project is completed. All monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other overhead and other direct and indirect expenses (including attorneys' fees) or damages incurred by County incident to such completion, shall be deducted from the Contract Amount, and if such expenditures exceed the unpaid balance of the Contract Amount, Design-Build Firm agrees to pay promptly to County on demand the full amount of such excess, including costs of collection, attorney's fees (including appeals) and interest thereon at the maximum legal rate of interest until paid. If the unpaid balance of the Contract Amount exceeds all such costs, expenditures and damages incurred by the County to complete the Work, such excess shall be paid to the Design-Build Firm. The amount to be paid to the Design-Build Firm or County, as the case may be, and this obligation for payment shall survive termination of the Agreement.

17.4. The liability of Design-Build Firm hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained, and obligations assumed by County in good faith under the belief that such payments or assumptions were necessary or required, in completing the Work and providing labor, materials, equipment, supplies, and other items therefor or re-letting the Work, in settlement, discharge or compromise of any claims, demands, suits, and judgments pertaining to or arising out of the Work hereunder.

17.5. If, after notice of termination of Design-Build Firm's right to proceed pursuant to this Section, it is determined for any reason that Design-Build Firm was not in default, or that its default was excusable, or that County is not entitled to the remedies against Design-Build Firm provided herein, then Design-Build Firm's remedies against County shall be the same as and limited to those afforded Design-Build Firm below under Subsection 18.1, Termination for Convenience.

17.6 If the Design-Build Firm refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Design-Build Firm in conjunction with this Agreement then the County may, without prejudice to any right or remedy and after giving the Design-Build Firm and his surety, if any, seven (7) days written notice, during which period Design-Build Firm still fails to allow access, terminate the employment of the Design-Build Firm and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Design-Build Firm, and may finish the project by whatever method it may deem expedient. In such case, the Design-Build Firm shall not be entitled to receive any further payment until the Project is finished. Reasonable terminal expenses incurred by the County may be deducted from any payments left owing the Design-Build Firm (excluding monies owed the Design-Build Firm for subcontract work).

18. TERMINATION FOR CONVENIENCE AND RIGHT OF SUSPENSION

18.1. County shall have the right to terminate this Agreement without cause upon seven (7) calendar days written notice to Design-Build Firm. In the event of such termination for convenience, Design-Build Firm's recovery against County shall be limited to that portion of the Contract Amount earned through the date of termination, together with any retainage withheld and reasonable termination expenses incurred, but Design-Build Firm shall not be entitled to any other or further recovery against County, including, but not limited to, damages or any anticipated profit on portions of the Work not performed.

18.2. County shall have the right to suspend all or any portions of the Work upon giving Design-Build Firm two (2) calendar days' prior written notice of such suspension. If all or any portion of the Work is so suspended, Design-Build Firm's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in the Contract Documents. In no event shall the Design-Build Firm be entitled to any additional compensation or damages. Provided, however, if the ordered suspension exceeds three (3) months, the Design-Build Firm shall have the right to terminate the Agreement with respect to that portion of the Work which is subject to the ordered suspension.

19. COMPLETION

19.1. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the County shall promptly make such inspection and, if it finds the work acceptable and fully performed under the Contract Documents, shall promptly issue a final Certificate for Payment, stating that, on the basis of observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Design-Build Firm is due and payable. The final payment shall not become due and payable until Design-Build Firm submits: (1) the Release and Affidavit in the form attached as Exhibit D, (2) consent of surety to final payment, (3) if required by County, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens, arising out of the Contract Documents, to the extent and in such form as may be designated by County, and (4) a published copy of the Notice of Completion as provided for in section 19.2. County reserves the right to inspect the Work and make an independent determination as to the Work's acceptability. Unless and until the County is completely satisfied, the final payment shall not become due and payable.

19.2 After the Work is ready for final inspection and acceptance by the County, a legal advertisement must be published by the Design-Build Firm in a local newspaper of a general countywide circulation at least thirty (30) days before final payment shall be made. Example of such publication is as follows:

Legal Notice of Completion

Notice is hereby given that the undersigned Design-Build Firm has completed and has ready for acceptance by the Board of County Commissioners of Escambia County, Florida, the following construction project:

(Project Name and Address)

(Legal Name and Address - entity of the Design-Build Firm)

Subcontractors, materialmen, and other persons having payment claims against the Design-Build Firm relating to this project should govern themselves accordingly.

20. WARRANTY

20.1. Design-Build Firm shall obtain and assign to County all express warranties given to Design-Build Firm or any subcontractors by any material men supplying materials, equipment or fixtures to be incorporated into the Project. Design-Build Firm warrants to County that any materials and equipment furnished under the Contract Documents shall be new unless otherwise specified, and that all Work shall be of good quality, free from all defects and in conformance with the Contract Documents. Design-Build Firm further warrants to County that all materials and equipment furnished under the Contract Documents shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturers, fabricators, suppliers or processors except as otherwise provided for in the Contract Documents. If, within one (1) year after substantial completion and acceptance, any Work is found to be defective or not in conformance with the Contract Documents, Design-Build Firm shall correct it promptly after receipt of written notice from County. Design-Build Firm shall also be responsible for and pay for replacement or repair of adjacent materials or Work, which may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which County is entitled as a matter of law. The Performance Bond shall remain in full force and effect throughout the one (1) year Warranty Period.

21. TESTS AND INSPECTIONS

21.1. County, its respective representatives, agents and employees, and any governmental agencies with jurisdiction over the Project shall have access at all times to the Work, whether the Work is being performed on or off of the Project site, for their observation, inspection and testing. Design-Build Firm shall provide proper, safe conditions for such access. Design-Build Firm shall provide County with timely notice of readiness of the Work for all required inspections, tests or approvals.

21.2. If the Contract Documents or any codes, laws, ordinances, rules or regulations of any public authority having jurisdiction over the Project requires any portion of the Work to be specifically inspected, tested or approved, Design-Build Firm shall assume full responsibility therefore, pay all costs in connection therewith and furnish County the required certificates of inspection, testing or approval. All inspections, tests or approvals shall be performed in a manner and by organizations acceptable to the County.

21.3. If any Work that is to be inspected, tested or approved is covered without written concurrence from the County, such work must, if requested by County, be uncovered for observation. Such uncovering shall be at Design-Build Firm's expense unless Design-Build Firm has given County timely notice of Design-Build Firm's intention to cover the same and County has not acted with reasonable promptness to respond to such notice. If any Work is covered contrary to written directions from County, such Work must, if requested by County, be uncovered for County's observation and be replaced at Design-Build Firm's sole expense.

21.4. The County shall charge to Design-Build Firm and may deduct from any payments due Design-Build Firm all engineering and inspection expenses incurred by County in connection with any overtime work. Such overtime work consisting of any work during the construction period beyond the regular eight (8) hour day and for any work performed on Saturday, Sunday or holidays.

21.5. Neither observations by the County nor inspections, tests or approvals by others shall relieve Design-Build Firm from Design-Build Firm's obligations to perform the Work in accordance with the Contract Documents.

22. DEFECTIVE WORK

22.1. Work not conforming to the requirements of the construction plans or Contract Documents or work conforming to the construction plans or contract documents containing errors or omissions, including, but not limited to, design flaws shall be deemed defective Work. If required by County, Design-Build Firm shall as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the defective Work has been rejected by County, remove it from the site and replace it with undefective Work. Design-Build Firm shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold County harmless for same.

22.2. If the County considers it necessary or advisable that covered Work be observed by County or inspected or tested by others, Design-Build Firm, at County's request, shall uncover, expose or otherwise make available for observation, inspection or tests as County may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Design-Build Firm shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals), and County shall be entitled to an appropriate decrease in the Contract Amount. If, however, such Work is not found to be defective, Design-Build Firm shall be allowed an increase in the Contract Amount and/or an extension of the Contract Time, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

22.3. If any portion of the Work is defective, or Design-Build Firm fails to supply sufficient skilled workers with suitable materials or equipment, or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, County may order Design-Build Firm to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of County to stop the Work shall not give rise to any duty on the part of County to exercise this right for the benefit of Design-Build Firm or any other party.

22.4. Should the County determine, at its sole opinion, it is in the County's best interest to accept defective Work, the County may do so. Design-Build Firm shall bear all direct, indirect and consequential costs attributable to the County's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such defective Work, incorporating the necessary revisions in the Contract Documents and reflecting an appropriate decrease in the Contract Amount. If the County accepts such defective Work after final payment, Design-Build Firm shall promptly pay County an appropriate amount to adequately compensate County for its acceptance of the defective Work.

22.5. If Design-Build Firm fails, within a reasonable time after the written notice from County, to correct defective Work or to remove and replace rejected defective Work as required by County, or if Design-Build Firm fails to perform the Work in accordance with the Contract Documents, or if Design-Build Firm fails to comply with any of the provisions of the Contract Documents, County may, after seven (7) days' written notice to Design-Build Firm, correct and remedy any such deficiency. To the extent necessary to complete corrective and remedial action, County may exclude Design-Build Firm from any or all of the Project site, take possession of all or any part of the Work, and suspend Design-Build Firm's services related thereto, take possession of Design-Build Firm's tools, appliances, construction equipment and machinery at the Project site and incorporate in the Work all materials and equipment stored at the Project site or for which County has paid Design-Build Firm but which are stored elsewhere. Design-Build Firm shall allow County, and their respective representatives, agents, and employees such access to the Project site as may be necessary to enable County to exercise the rights and remedies under this Subsection. All direct, indirect and consequential costs of County in exercising such rights and remedies shall be charged against Design-Build Firm, and a Change Order shall be issued, incorporating the necessary revisions to the Contract Documents, including an appropriate decrease to the Contract Amount. Such direct, indirect and consequential costs shall include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work or others destroyed or damaged by correction, removal or replacement of Design-Build Firm's defective Work. Design-Build Firm shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by County of County's rights and remedies hereunder.

23. SUPERVISION AND SUPERINTENDENTS

23.1. Design-Build Firm shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Design-Build Firm shall be responsible to see that the finished Work complies accurately with the Contract Documents. Design-Build Firm shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without prior written notice to County except under extraordinary circumstances. The superintendent shall be Design-Build Firm's representative at the Project site and shall have authority to act on behalf of Design-Build Firm. All communications given to the superintendent shall be as binding as if given to the Design-Build Firm. County shall have the right to direct Design-Build Firm to remove and replace its Project superintendent, with or without cause.

24. PROTECTION OF WORK

24.1. Design-Build Firm shall fully protect the Work from loss or damage and shall bear the cost of any such loss or damage until final payment has been made. If Design-Build Firm, or any one for whom Design-Build Firm is legally liable, is responsible for any loss or damage to the Work, or other work or materials of County or County's separate Design-Build Firms, Design-Build Firm shall be charged with the same, and any monies necessary to replace such loss or damage shall be deducted from any amounts due Design-Build Firm.

24.2. Design-Build Firm shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Build Firm subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

25. EMERGENCIES

25.1. In the event of an emergency affecting the safety or protection of persons or the Work or property at the Project site or adjacent thereto, Design-Build Firm, without special instruction or authorization from County is obligated to act to prevent threatened damage, injury or loss. Design-Build Firm shall give County written notice within forty-eight (48) hours after the occurrence of the emergency, if Design-Build Firm believes that any significant changes in the Work or variations from the Contract Document have been caused thereby. If the County determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Change Order shall be issued to document the consequences of the changes or variations. If Design-Build Firm fails to provide the forty-eight (48) hour written notice noted above, the Design-Build Firm shall be deemed to have waived any right it otherwise may have had to seek an adjustment to the Contract Amount or an extension to the Contract Time.

26. USE OF PREMISES

26.1. Design-Build Firm shall confine all construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other lands and areas permitted by law, rights of way, permits and easements, and shall not unreasonably encumber the Project site with construction equipment or other material or equipment. Design-Build Firm shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or any land or areas contiguous thereto, resulting from the performance of the Work.

27. SAFETY

27.1. The Design-Build Firm shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Design-Build Firm shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- 27.1.1. All employees of the Work and other persons and/or organizations who may be affected thereby;
- 27.1.2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site; and
- 27.1.3. Other property on Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and any underground structures or improvements not designated for removal, relocation or replacement in the contract documents.

27.2. The Design-Build Firm shall comply with all applicable codes, laws, ordinances, rules and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. The Design-Build Firm shall erect and maintain all necessary safeguards for such safety and protection. The Design-Build Firm shall notify owners of adjacent property and of underground structures and improvements and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation or replacement of their property. Design-Build Firm's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Work is completed and final acceptance of same by County has occurred.

27.3. The Design-Build Firm shall designate a responsible representative at the Project site whose duty shall be the prevention of accidents. This person shall be Design-Build Firm's superintendent unless otherwise designated in writing by the Design-Build Firm to the County.

27.4. The Design-Build Firm shall adhere at all times to the minimum safety guidelines for construction and renovation projects as set out in Exhibit C of this Agreement.

28. PROJECT MEETINGS

Prior to the commencement of Work, the Design-Build Firm shall attend a preconstruction conference with the County to discuss the Progress Schedule, procedures for handling shop drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. During the prosecution

of the Work, the Design-Build Firm shall attend any and all meetings convened by the County with respect to the Project, when directed to do so by County. Design-Build Firm shall have its subcontractors and suppliers attend all such meetings (including the preconstruction conference) as may be directed by the County.