

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

=====

Meeting Date:	September 12, 2006	Consent <input checked="" type="checkbox"/> [X]	Regular <input type="checkbox"/> []
		Public Hearing <input type="checkbox"/> []	

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department

=====

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Contract for Disaster Recovery Design/Build Services with CH2M HILL, Inc.

Summary: This Contract is recommended as prudent planning to ensure the integrity of the County's water and wastewater infrastructure prior to, during, and immediately following natural disasters, including Category 4 or 5 hurricanes. Following these events, reconstruction of water utility facilities needs to begin immediately in order to protect public health. This Contract facilitates the immediate reconstruction of such infrastructure and will be used by the Water Utilities Department to obtain engineering/professional design/build/construction services for disaster recovery or mitigation related projects. The Facilities Development and Operations Department may also use the design/build Contract. Consultant Service Authorizations will be negotiated and issued in accordance with the standard County procedures outlined in Countywide PPM No. CW-F-050. The Contract has a term of one (1) year, subject to two (2) annual renewals. The selected firm has agreed to meet or exceed a 15% small business participation goal. The consultant has included a list of certified small business (SBE) subcontractors which they intend to use to meet their goal.

(WUD 06-103)

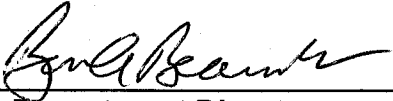

Countywide

(JM)

Background and Justification: The on-going operation, maintenance and administration of the Water Utilities Department requires consulting engineering and design/build services to supplement staff availability and expertise in order to mitigate and recover from natural disasters including Category 4 or 5 hurricanes. The selected design/build firm was procured under the provisions of s. 287.055, Florida Statutes (Consultant Competitive Negotiation Act) and Countywide PPM No. CW-O-048. Assignment of tasks to the selected design/build firm will be at the sole discretion of the County, and the County may choose to select another firm or use in-house staff to perform any task. Task scope and fee negotiation will be performed on a task by task basis subject to the standard County procedures outlined in Countywide PPM No. CW-F-050.

Attachments:

1. Two (2) Original Contracts
2. Location Map

Recommended By:		
	Department Director	Date
Approved By:		9-11-06
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No: Fund ____ Agency ____ Org ____ Object ____

Is Item Included in Current Budget? Yes ____ No ____

Reporting Category ____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This Contract does not encumber any funds. Consultant Service Authorizations will be issued under each of these Contracts on a task-by-task basis.

C. Department Fiscal Review: Delra M. West

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

Jim D. L. 9-7-06
OFMB

Jim J. L. 9/8/06
Contract Development and Control
6/18/06

B. Legal Sufficiency: James C. Murphy Jr. 9/11/06
Assistant County Attorney

C. Other Department Review:

Department Director

This Contract complies with our contract review requirements.

Bonds will be furnished at time of work issuance. At the time of our review, the certificates of insurance were not available.

This summary is not to be used as a basis for payment.

DISASTER RECOVERY SERVICES

DESIGN/BUILD CONTRACT

PROJECT NO. WUD 06-103

BETWEEN

PALM BEACH COUNTY FLORIDA

AND

CH2M HILL CONSTRUCTORS, INC.

SEPTEMBER 2006

AGREEMENT

THIS CONTRACT, made and entered into this _____ day of September, 2006, between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County" and CH2M Hill Constructors, Inc., hereinafter referred to as the "DESIGN-BUILD ENTITY".

WITNESSETH:

That the said Design-Build Entity having been awarded the contract for the:
DISASTER RECOVERY SERVICES – DESIGN/BUILD

PROJECT NO. WUD 06-103

in accordance with the Request For Proposals therefore and for and in consideration of the promises and of the covenants and agreements, and of the payments herein specified, to be made and performed by the Design-Build Entity and the County, the Design-Build Entity hereby covenants and agrees to and with the County to undertake and execute all of the said named work, in a good, substantial and workmanlike manner, and to furnish and pay for all design services, materials, labor, supervision, equipment, supplies, fees, expertise, and other services necessary to fully complete all work in accordance with all requirements of the Contract Documents and in accordance with all applicable codes and governing regulations, within the time limit specified in the Bid Form. The Contract Documents consist of the following documents, as and when issued, which shall be incorporated herein by reference.

- A - Request For Proposal and Design-Build Entity's Response thereto
- B - Completed Bonds, Guarantee and Insurance Forms.
- C - General Conditions.
- D - Supplemental Conditions.
- E - Special Conditions.
- F - Technical Specifications.
- G - Addenda.
- H - Drawings.
- I - Consultant Services Authorization (CSA)
- J - Work Authorization (WA)

Design-Build Entity agrees to accept as full compensation for the satisfactory performance of this Contract such sums as shall be authorized by such Consultant Services Authorization (CSA(s)) and Work Authorization (WA(s)) as may be issued by County. The prices agreed to in such CSA(s) and WA(s) are for the completed work set forth therein and all expense,

original

direct or indirect, connected with the proper execution of the work and of maintaining the same until it is accepted by the Board of County Commissioners. It is understood that, for each issued CSA(s) or WA(s), the Design-Build Entity will hold and maintain current, appropriate certification(s) and/or license(s) for the purpose of performing the specified work pursuant to this Contract. The time limit for the Substantial Completion of all work under this contract shall be as stated in the issued CSA(s) or WA(s). The date fixing the beginning of this period upon the calendar shall be established and stated in a Notice to Proceed to be issued by the County.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Contract on behalf of the said County and caused the seal of the said County to be affixed hereto, and the Design-Build Entity has hereunto set his hand and seal the day and year written. The Design-Build Entity represents that it is authorized to execute this contract on behalf of itself and its Surety.

ATTEST:	PALM BEACH COUNTY, FLORIDA, A
SHARON R. BOCK CLERK AND COMPTROLLER	Political Subdivision of the State of Florida BOARD OF County COMMISSIONERS

By: _____
Tony Masilotti, Chairman


APPROVED AS TO FORM AND LEGAL SUFFICIENCY	APPROVED AS TO TERMS AND CONDITIONS
---	-------------------------------------

Assistant County Attorney

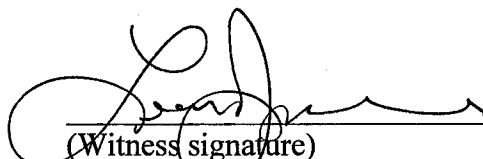


Bevin A. Beaudet, Director
Water Utilities Department

CH2M HILL Constructors, Inc.

By: 
Title: Senior Vice President
Delaware

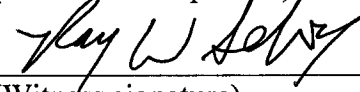
(Insert state of corporation)



(Witness signature)

LEN GARNER

(Witness name printed)



(Witness signature)

RAY W. SELVY

(Witness name printed)

August 29, 2006

(Date of execution)

9189 S. Jamaica Street

(Design-Build Entity's Official Address)

Englewood, CO 80112

(Design-Build Entity's City, State, Zip Code)

GENERAL CONDITIONS

I - GENERAL PROVISIONS

A. General Scope of Work

1. This agreement is intended to provide a continuing contractual mechanism for the Water Utilities Department to obtain professional Design-Build Consulting Services within the scope of the practice of architecture, engineering, landscape architecture or land surveying, as defined by the laws of the State of Florida, including evaluation, permitting, staff assistance, design/build, construction, and construction management services for projects as further defined below:

- a. Establish a data base of As-Built drawings and specs, O&M manuals, and permits for major above ground facilities that may need to be repaired or rebuilt after a Category 4-5 storm event.
- b. Provide design/build or CM at risk services to repair or replace damaged facilities in-kind.
- c. Provide "on-call" skilled personnel for operations support, debris removal, damage assessment and repairs. This contract is based upon the assumption that half of Palm Beach County Water Utilities Department staff will not be available following the storm event.
- d. Provide key services/equipment/commodities that are required for the continued operations and repair of the utility from vendors located inside or outside the State of Florida for a period of 3-6 months. This contract is based upon the assumption that Palm Beach County Water Utilities Department will not be able to purchase materials locally.
- e. Other related Design/Build Services.

2. Assignment of tasks to the Design/Build Entity will be at the sole discretion of the County. The County may choose to select another firm or use in-house staff to perform any of the above described items in whole or in part. Task assignments will be subject to scope definition and fee negotiation on a task-by-task basis. It is intended that the agreement for the above described project be for a term of three years, subject to annual performance review. No minimum amount of professional or construction service or compensation is guaranteed to the Design/Build Entity.

3. Palm Beach County's annual goal for Small Business Enterprise (SBE) participation for this contract is 15%, as further detailed in the SBE Program Policies and Procedures Manual dated July 2, 2004. Except as may be specifically provided to the contrary, in writing, Design/Build Entity agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.

4. The task specific scope of work to be performed by the Design/Build Entity shall be determined by the parties at the time the County requests services as recommended by the Design/Build Entity on-scene representatives. The Design/Build Entity shall provide all supervision, labor, materials, tools, equipment, subcontracted equipment/tools and materials necessary for the performance and completion of the work specified in the CSA(s) and WA(s), unless otherwise agreed to between the parties. The Design/Build Entity shall conduct the work so

as not to interfere with disaster response and recovery activities of federal, state, and local governments and agencies or public utilities. Design/Build Entity shall provide a Project Manager for the entire duration of the operation, subject to the approval of County. The Project Manager's education and experience shall be appropriate to the nature of each event. The Project Manager shall attend meetings, provide for daily progress reports as well as dispatch field supervisors where necessary. All key personnel must be trained in the National Incident Management System and respond in accordance with applicable national response guidelines. The Project Manager may be removed by the County, in its discretion, at any time. The Project Manager shall remain the same throughout the duration of the project, unless the County deems otherwise.

5. Design/Build Entity shall have every available means of communication, including but not limited to, radio, beepers, satellite telephones, Blackberrys, PDAs and cellular telephones to be utilized during the performance of services pursuant to this Contract.

6. Once a storm or emergency occurs, the following services may be required during and within 48 hours of a storm event:

- a. Provide "on-call", skilled personnel for operations support, debris removal, damage assessment, cost estimating and restoration of service. During the hurricane planning phase of this work, the type of employees, by skill set, will be determined.
- b. Provide interim IT support and data hosting/managed services from remote location to ensure continuity of services. Additional services to enable response and support may include resource management, consequence assessment and protective actions, public communications, and evacuation planning and support.
- c. Conduct damage assessment to ensure that all reimbursable damage (FEMA and/or insurance) has been identified; prepare cost estimates to restore/upgrade damaged facilities; identify alternative or mitigation projects that might be eligible for other sources of funding; prepare and complete required FEMA data tracking forms; manage submittal process to appropriate entity and respond to agency questions.
- d. Provide engineering design, permitting, bid phase services and construction phase services for facilities determined to be replaced, re-built, "hardened" or upgraded to Palm Beach County building code requirements.
- e. Provide design-build, construction management or construction management-at-risk services for facilities determined to be replaced, re-built, "hardened" or upgraded to Palm Beach County building code requirements.
- f. Provide program management services for implementation of event-related recovery efforts of treatment plants, facilities and infrastructure, communications, and information systems, or other capital projects that are implemented as part of the event recovery and mitigation efforts.

- g. Conduct after action services following storm event to identify strengths, weaknesses, threats and opportunities related to the recent event. Based on that analysis, update economic analysis, operations plan, identify long-term capital improvements required, improvements to communication systems, integration with County-level emergency response entities and desired operational improvements; re-visit equipment/chemical and other "on-call" contract vehicles and make adjustments to the operations plan and contracts, as needed.
7. County encourages the Design/Build Entity to utilize, when appropriate, local resources of the community, to the greatest extent possible for disaster recovery assistance.
8. The County, at its sole discretion, may expand the scope of work to include additional requirements in subsequent Consultant Services Authorization or Work Authorizations.

B. Work Products Required

1. Records - Design/Build Entity shall prepare full and detailed daily itemized records indicating all services, and site expenditure(s) performed by the DESIGN BUILD ENTITY. Design/Build Entity shall submit to County documentation of all costs associated with the emergency incidents in a timely manner to assist the County in cost recovery in accordance with established requirements of all governmental agencies. Design/Build Entity shall coordinate with appropriate County staff regarding proper billing procedures to meet all governmental agencies' reimbursement requirements. Invoicing requirements shall include segregation of costs by site or Project Worksheet (PW).
2. Reports - The Design/Build Entity shall make such periodic reports to the County, as necessary, to detail the progress of disaster recovery services. Based on the disaster, such reports shall include but are not limited to:
- a. A daily report detailing the locations, street names and addresses where particular services were conducted and/or completed; the total number of personnel engaged on that day, the type and number of equipment and vehicles in operation on that day; percent completion of the project; the estimated completion date; any damage to private property caused by Design/Build Entity's operations.
 - b. A monthly summary of the information from the daily reports.
 - c. At final acceptance of the project by the County, the Design/Build Entity shall prepare a detailed description of recovery activities conducted, to include, but not limited to total labor and equipment, by type; the total cost of the project.
 - d. Submittal of written reports documenting all action taken to assess and dispose of hazardous materials.
 - e. Other services as identified within the course of the Agreement.

3. Design/Build Entity shall submit a plan describing methods of compliance with all applicable laws and regulations.

C. Performance Schedule

The County anticipates the performance for services/commodities related to this Agreement to begin at the time an emergency is declared by the County, or as other such services are request by CSA(s) or WA(s). No Work shall be performed until a CSA or WA is issued. Emergency services may be initiated by a CSA or WA delivered by hand, e-mail or facsimile transmission.

D. Emergency Operations Command Center

The Emergency Operations Center ("EOC") is located at the Palm Beach County Emergency Management Division, located at 20 S. Military Trail. The Water Utilities Department Command Center is located at the Water Utilities Administration Building, Central Region Operation Center (CROC), 8100 Forest Hill Blvd., West Palm Beach, Florida. The WUD Command Center shall be the primary point of contact and base of operations. The Emergency Operations Center

E. Definitions

Wherever the words or terms defined in this section or pronouns used in their stead occur in the Specifications or other Contract Documents, they shall have the meanings herein given.

1. "ADR" - Alternative Dispute Resolution.
2. "Application for Payment" The form furnished by the County which is to be used by the Design/Build Entity to request progress or final payment and which includes such supporting documentation as is required by the Contract Documents.
3. "Bonds" Bid, Public Construction Bond, and other instruments which protect against loss due to inability, failure or refusal of the Design/Build Entity to perform the Work specified in the Contract Documents.
4. "Change Order" A document recommended by the Engineer, which is signed by the Design/Build Entity and the County and authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time as set forth in an issued Work Authorization and which is issued on or after execution of Contract.
5. "Construction Manager" The Construction Manager is an employee of the Design/Build Entity who shall be in attendance at the project site during performance of the Work and shall represent the Design/Build Entity. Communications given to the Construction Manager or decisions made by the Construction Manager shall be as binding as if given to or made by the Design/Build Entity. Important communications or decisions shall be confirmed in writing. Other communications or decisions shall be similarly confirmed on written request in each case.
6. "Consultants Services Agreement" A document, so labeled, which, when executed by the County and Design/Build Entity, becomes a part of the Contract Documents and specifies the scope of work, duration, total price, liquidated damages, and schedule for specific professional

services to be rendered regarding a project to be demolished, repaired, replaced, or constructed by Design/Build Entity in accordance with the terms of the contract document.

7. "Contract" The written agreement between the County and the Design/Build Entity covering the Work to be performed; when other documents are attached to the Agreement they become part of the Contract. The Contract is also referred to as the Agreement.

8. "Contract Price" The total monies payable by the County to the Design/Build Entity under the terms and conditions of the Contract Documents.

9. "Contract Time" The number of successive calendar days stated in each CSA or WA for Final Completion of the Work.

10. "County" Palm Beach County Board of County Commissioners, Palm Beach County, Florida.

11. "Defective Work" Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; or Work that has been damaged prior to the Engineer's recommendation of final payment.

12. "Drawings" The drawings, plans, maps, profiles, diagrams, and other graphic representations which show the character, location, nature, extent and scope of the Work to be performed, which have been prepared and approved by the Engineer, and which are considered a part of the Contract Documents.

13. "Effective Date of the Contract " The date indicated in the Contract on which it was executed, but if no such date is indicated it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

14. "Emergency Services" Services provided by Design/Build Entity following a declaration of emergency and notice by the County as described herein.

15. "Engineer" – PALM BEACH County WATER UTILITIES DEPARTMENT and its authorized agents, inspectors or representatives acting within the scope of duties entrusted to them by the County.

16. "Field Order" An order by the Engineer that does not impact the cost or time of performance of the Work.

17. "Final Acceptance" – The date the project is finally accepted by the Board of County Commissioners or their designee.

18. "General Requirements" Division 1 of the Technical Specifications.

19. "Inclement Weather" – A normal work day during which the Design/Build Entity was unable to perform critical path work for a continuous period of more than four (4) hours during that day.

20. "Inspector" The inspector shall be in attendance at the project site during performance of the Work and shall report to, and be under the direct supervision of, the Resident Engineer or Resident Project Representative. The inspector shall have no authority to permit deviation from or to modify any of the provisions of the Drawings or Specifications without the written permission or instruction of the Engineer.

21. "Laws and Regulations; Laws or Regulations" Laws, rules codes, regulations, ordinances and/or orders promulgated by a lawfully constituted body authorized to issue such Laws and Regulations.

22. "Local Preference" - In accordance with the Palm Beach County Local Preference Ordinance, a preference will be given to bidders having a permanent place of business in Palm Beach County. Local preference means that if the lowest responsive, responsible bidder is a regional or non-local business, then all bids received from responsive, responsible local bidders are decreased by 5%. The original bid amount is not changed; the 5% decrease is calculated only for the purposes of determining local preference. To receive a local preference, a bidder must have a permanent place of business in existence prior to the County's issuance of this Invitation for Bid. A permanent place of business means that the bidder's headquarters is located in Palm Beach County; or, the bidder has a permanent office or other site in Palm Beach County where the bidder will produce a substantial portion of the goods or services to be purchased. A valid occupational license issued by the Palm Beach County Tax Collector will be used to verify that the bidder had a permanent place of business prior to the issuance of this Invitation for Bid. A Palm Beach County Occupational license is required unless specifically exempted by law. In lieu of a Palm Beach County occupational license, the bidder shall include the current occupational license issued to the bidder in the response. Please note that the name and address on any submitted occupational license must be the same name and address that is included in the bid submitted to Palm Beach County. The bidder must submit the attached "Certification of Business Location" along with a copy of the bidder's occupational license at the time of bid submission. Failure to submit this information will cause the bidder to not receive a local preference. Palm Beach County may require a bidder to provide additional information for clarification purposes at any time prior to the award of the contract.

In procurements where price is the only factor for selection, the provisions of this part shall not be applied where its application would result in an award which exceeds the otherwise lowest responsive, responsible bid by one hundred thousand dollars (\$100,000.00).

23. "Normal Working Hours" - Normal working hours shall consist of forty (40) hours per week with no more than eight (8) hours per day.

24. "Notice to Proceed" The written notice issued by the County, or its authorized agents, to the Design/Build Entity authorizing the Design/Build Entity to proceed with the Work and establishing the date of commencement of the Contract Time.

25. "Operations Support" Technical support, skilled labor, materials, equipment and tools required for the operation, maintenance, repair, or replacement of water or wastewater treatment facilities.

26. "Partial Utilization" Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work.
27. "Professional/Consulting Services" refers to all design, study, operation, management, and report activities primarily performed by licensed architects, engineers, their employees and subconsultants as may be authorized by CSA or required by an issued WA.
28. "Project" The entire construction to be performed as provided in the Contract Documents.
29. "Resident Engineer" (Same definition as for Resident Project Representative hereinafter).
30. "Resident Project Representative" The resident project representative shall be in attendance at the project site during performance of the Work and shall represent the Engineer. Communications given to the resident project representative or decisions made by the resident project representative shall be as binding as if given to or made by the Engineer. Important communications or decisions shall be confirmed in writing. Other communications or decisions shall be similarly confirmed or requested in writing in each case.
31. "Shop Drawings" All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or on behalf of the Design/Build Entity to illustrate some portion of the Work, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Design/Build Entity to illustrate material or equipment for some portion of the Work.
32. "Specifications" (Same definition as for Technical Specifications hereinafter).
33. "SubDesign/Build Entity" A subconsultant or subcontractor, individual, firm, or corporation having a direct contract with the Design/Build Entity or with any other SubDesign/Build Entity for the performance of a part of the Work authorized by an issued CSA, WA, Supplement, or Change Order.
34. "Substantial Completion" The date as determined by the Engineer, as evidenced by the Engineer's definitive Certificate of Substantial Completion, when the construction of the entire Project (or a specified part thereof) is sufficiently completed, in accordance with the Contract Documents, so that the entire Project (or a specified part) can be utilized for the purposes for which it is intended. When the entire Project is considered to be Substantially Complete, this does not constitute Final Acceptance or Final Completion of the entire Project.
35. "Supplier" A manufacturer, fabricator, provider, distributor, materialman or vendor.
36. "Supplement" an agreement, signed by County and Design/Build Entity, which amends the scope, time, or compensation provided for in an issued Consultant Service Authorization.
37. "Technical Specifications" Those portions of the Contract Documents consisting of the General Requirements and written technical descriptions of materials, equipment, products, supplies, manufactured articles, standards and the execution of the Work.

38. "Underground Utilities" All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasement containing such facilities which have been installed underground to furnish any of the following services or materials: water, sewage and drainage removal, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, traffic, or other control systems.

39. "Work" – All of Design/Build Entity's design, construction, and other services required by the Contract Documents including, but not limited to, including procuring and furnishing all materials, equipment, services, and labor reasonably inferable from the Contract Documents.

40. "Work Authorization" - A document which, when executed by the County and Design/Build Entity, becomes a part of the Contract Documents and specifies the scope of work, duration, total price, liquidated damages, and schedule for a specific project to be demolished, repaired, replaced, or constructed by Design/Build Entity in accordance with the terms of the contract document. A Work Authorization may be referred to herein as WA(s).

41. "Work Directive" A written directive to the Design/Build Entity, issued on or after the Effective Date of the Contract, signed by the County and recommended by the Engineer, ordering an addition, deletion or revision in the Work in response to an emergency or in the case of an inability to agree upon the amount of compensation of a requested change. The Design/Build Entity shall proceed upon receipt of a Work Directive to complete the work on a "cost plus" basis in accordance with Article 44, Paragraph A.3.C. A Work Directive may not change the Contract Price or Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price and/or Contract Time.

42. "Written Amendment" A written amendment of the Contract Documents, signed by the County and the Design/Build Entity on or after the Effective Date of the Contract and normally dealing with the non engineering or non technical rather than strictly work related aspects of the Contract Documents.

F. Design/Build Entity's Insurance

1. Unless otherwise specified in this Contract, the Design/Build Entity shall, at its sole expense, maintain in full force and effect at all times during the performance of work hereunder, insurance coverage with limits not less than those set forth in the table below and with insurers and under forms of policies acceptable to the County. Design/Build Entity shall deliver to County Certificate(s) of Insurance evidencing that such policies are in full force and effect, not later than fifteen (15) calendar days after receipt of notification from County, but in any event, prior to execution of the Contract by County and prior to commencement of work on the project. Such certificate(s) shall adhere in every respect to the conditions set forth herein. All insurance shall be primary coverage with respect to the County and shall so state on the policy. Any insurance carried by the County, its consultants, or the Engineer, shall be excess insurance only.

2. The Design/Build Entity shall purchase and maintain during the life of this Contract, Worker's Compensation Insurance, including Employers Liability, to comply with all applicable state and federal laws covering all of its employees on the project, and in accordance with all of

the limits, terms and conditions set forth herein. Design/Build Entity shall defend, indemnify and save the County and the Engineer harmless from any damages resulting to them for failure of Design/Build Entity to take out or maintain such insurance.

3. Design/Build Entity shall purchase and maintain during the life of this Contract Commercial General Liability Insurance in accordance with all of the limits, terms and conditions set forth herein.

4. Should any of the work hereunder involve watercraft owned or operated by Design/Build Entity, or any subDesign/Build Entities, such shall be insured under the Commercial General Liability Policy or by other such liability insurance such as Protection and Indemnity.

5. Design/Build Entity shall purchase and maintain during the life of this Contract Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles with all of the limits, terms and conditions set forth herein.

6. Should any of the Work hereunder involve the construction of a building and/or construction within an existing building, Design/Build Entity shall procure and maintain "ALL RISK" Builder's Risk Insurance, including, but not necessarily limited to fire, flood, wind or water damage, in accordance with all of the limits, terms and conditions set forth herein.

7. Should any of the Work hereunder involve the hauling and/or rigging of property in excess of \$500,000 or \$250,000 in transit, Design/Build Entity shall procure and maintain "ALL RISK" Transit or Motor Truck Cargo Insurance or a similar form of coverage insuring against physical damage or loss of property being transported, stored, moved, or handled by Design/Build Entity, or any subDesign/Build Entities, pursuant to the terms of this Contract, subject to the limits, terms and conditions set forth herein.

8. Should any of the work hereunder involve aircraft (fixed wing or helicopter) owned or operated by Design/Build Entity, or any subDesign/Build Entities, Design/Build Entity shall procure and maintain Aircraft Liability Insurance in accordance with the terms and conditions set forth herein.

9. The requirement contained herein as to types and limits, as well as County approval of insurance coverage to be maintained by Design/Build Entity are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Design/Build Entity under the Contract.

10. Certificates of Insurance must provide clear evidence that Design/Build Entity's Insurance Policies contain the minimum limits of coverage and terms and conditions set forth herein. All policies must be endorsed so that thirty- (30) days advance notification of cancellation and/or any material change(s) in coverage shall be provided to the Board of County Commissioners, Palm Beach County, Florida. Insurance shall remain in full force and effect until all work required to be performed under the terms of this Contract are satisfactorily completed as evidenced by final acceptance of the Work by Palm Beach County.

11. In the event that the insurance certificates provided hereunder indicate that the insurance shall terminate and lapse during the period of this Contract, then in that event, the Design/Build

Entity shall furnish at least thirty (30) days prior to the expiration of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Contract and any extension thereof is in effect. Design/Build Entity shall not continue to work pursuant to this Contract unless all required insurance remains in effect. County may, without liability to the Design/Build Entity, stop work and/or withhold payment to Design/Build Entity until coverage is reinstated.

12. Design/Build Entity shall deliver original Certificate(s) of Insurance to:

Palm Beach County Water Utilities Department
Engineering Division
P.O. Box 16097
West Palm Beach, FL 33416-6097

Notices of cancellation, terminations and alterations of said policies shall be delivered to:

Palm Beach County Water Utilities Department
Engineering Division
P.O. Box 16097
West Palm Beach, FL 33406

13. STANDARD CONSTRUCTION CONTRACT INSURANCE REQUIREMENTS

	CONTRACTS LESS THAN \$500,000	CONTRACTS \$500,000 OR MORE
COMMERCIAL GENERAL LIABILITY: Combined Single Limit Personal Injury Bodily Injury and Property Damage	----- \$500,000 per occurrence	----- \$1,000,000 per occurrence
Liability Required Coverages: Premises/Operations Independent Design/Build Entities Products/Completed Operations Contractual Liability Broad Form Property Damage X-C-U Coverages, if applicable		
PROFESSIONAL LIABILITY	\$1,000,000	\$3,000,000
WORKERS COMPENSATION AND EMPLOYER'S LIABILITY:	Statutory	Statutory
If work is on or contiguous to navigable bodies of water:		
U.S. Longshoremen's and Harbor	\$100/500/100 \$500/500/500	
Workers Act and/or Jones Act Endorsements		

If work involves water craft
owned or operated by Design/Build Entity:
Protection and Indemnity Coverage

\$5,000,000 per occurrence

If work involves hauling and/or
rigging of property in excess
of \$500,000:

"ALL RISK" Transit or Motor Truck
Cargo or similar form of insurance

Replacement cost coverage
for highest value involved.
Must contain a Waiver of
Subrogation in favor of
Palm Beach County

If work involves any type of
aircraft (fixed wing or helicopter):
Aircraft Liability

\$5,000,000 each occurrence
bodily injury (including passenger
and property damage)

COMPREHENSIVE AUTO LIABILITY:
Combined Single Limit Bodily Injury
and Property Damage (must include
all owned, hired and non-owned
vehicles)

\$500,000 per occurrence \$500,000 per occurrence

BUILDER'S RISK:

"All Risk" including fire, flood,
wind, water, vandalism and
malicious mischief damage.
Policy must specifically eliminate
"Occupancy Clause". Must be
endorsed to cover until final
acceptance of project by the
County. Sub-limits for any coverage
are not acceptable if they are
less than the total value of
the project.

Limits equal to total
project construction value.
Design/Build Entity assumes all
deductibles as ongoing cost
of doing business. County
is not providing any
insurance on behalf of
Design/Build Entity for loss or
damage to work or to any
other property of
Design/Build Entity. If Design/Build
Entity
maintains any insurance for
loss of or damage to
Design/Build Entity's property, such
must be endorsed to include
a Waiver of Subrogation
against Palm Beach County.

ADDITIONAL REQUIREMENTS FOR CERTIFICATES OF INSURANCE:

- a. The certificate holder on the insurance certificate shall be "Board of County Commissioners, Palm Beach County, Florida" care of the Palm Beach County Water Utilities Department, P.O. Box 16097, West Palm Beach, Florida 33416-6097.
- b. The following paragraph shall appear unaltered on the Certificate of Insurance to guarantee that the Board of County Commissioners is named as additional insured:

"The Board of County Commissioners, Palm Beach County, Florida (a political subdivision of the State of Florida), are hereby named as additional insured under the terms of this policy."

- c. The following paragraph shall appear unaltered on the Certificate of Insurance to guarantee that the Palm Beach County Water Utilities Department, its officers, directors, agents, and employees are named as additional insured:

"Palm Beach County Water Utilities Department, its officers, directors, agents, and employees are hereby named as additional insured under the terms of this policy."

- d. The following paragraph shall appear unaltered on the Certificate of Insurance to guarantee that the Engineer, its officers, agents, and employees are named as additional insured.

"The Engineer, its officers, agents, and employees are hereby named as additional insured under the terms of this policy."

Must clearly indicate project name and project number to which it applies.

- f. Must contain a provision that County is to be provided at least thirty (30) days prior written notice in the event of cancellation, non-renewal, or material adverse change(s) in coverage.
- g. Evidence of renewal coverage must be provided at least fourteen (14) days in advance of any policy that may expire during the term of this Contract.
- h. General Liability must state coverage is primary as respect to County and its authorized representatives and contain Cross Liability and Severability of Interest clauses.

G. Preliminary Matters

- 1. When the Design/Build Entity delivers the signed Contracts to the County, the Design/Build Entity shall also deliver to the County such Insurance Certificates or other documents as the Design/Build Entity may be required to furnish in accordance with the Contract Documents.

The County will compensate Design/Build Entity for three (3) copies of the Contract Documents. Additional quantities of the Contract Documents will be furnished at Design/Build Entity expense.

H. Intent of Contract Documents

1. The Contract Documents comprise the entire Contract between the County and Design/Build Entity concerning the Work. The Contract Documents are complementary, so that any Work exhibited in the one, or any section of one, shall be executed just as if it has been set forth in all, in order that the Work shall be completed in every respect according to the complete design or designs as decided and determined by the Engineer.

2. It is the intent of the Contract Documents to describe the Work, functionally complete, 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.

3. In the event of a conflict, omission, error or discrepancy in the Contract Documents the Design/Build Entity shall promptly notify the Engineer. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be:

- a. Change Orders
- b. Work Authorizations
- c. Supplemental Agreements
- d. Revisions to plans and specs
- e. Special Conditions
- f. General Conditions
- g. Technical Specifications/Drawings/Plans
- h. RFP Requirements
- i. Design/Build Entity's Response to RFP

Detailed plans shall have precedence over general plans. In the event that any conflicts cannot be resolved by reference to this Governing Order of Contract Documents provision, then County shall resolve the conflict in any manner which is acceptable to County and which comports with the overall intent of the Contract Documents.

4. The captions or subtitles used in these Contract Documents constitute no part of the context hereof, but are only labels to assist in locating and reading the provisions hereof.

5. From time to time during the progress of the Work, the Engineer may furnish supplementary drawings attached to a Change Order, a Field Order, a work Directive, or as a response to the Design/Build Entity's request for additional information, as he determines necessary to show changes or define the Work in more detail, and these also shall be considered as part of the Contract Documents.

I. Pricing and Payment

1. Pricing for each CSA and WA issued pursuant to this agreement shall be in accordance with the rates, costs, and expenses set forth in Appendices A-1, A-2, or A-3 unless otherwise agreed to in writing by the parties. Emergency rates may be charged when Design/Build Entity receives written notice from County that an emergency has been declared, that the EOC has been activated, and that Design/Build Entity's services are required. Emergency rate pricing shall cease when Design/Build Entity receives written notice from the County to stand down from such pricing. For the purposes of this provision, written notice shall include notice by e-mail or facsimile transmission.
2. All payments made for Work performed pursuant to any CSA or WA shall be made in accordance with the applicable provisions of Florida Statute 218.70 *et seq*, the Local Government Prompt Payment Act.

J. Indemnification

1. In consideration of the amount paid and to be paid pursuant to the issued CSA(s) and WA(s) and other valuable consideration, the Design/Build Entity shall indemnify and hold harmless the County, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Design/Build Entity and persons employed or utilized by the indemnifying party in the performance of the construction contract. This provision shall, in all circumstances, be interpreted in a manner so as to be consistent with Florida Statute 725.06. To the fullest extent permitted by F.S. 725.06, Design/Build Entity shall:
 - a. defend, indemnify and save harmless the County, its officers, agents, employees, and, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of any operations connected with any design or construction undertaken pursuant to this contract and any issued CSA(s) and WA(s) of this Project; or by or in consequence of any negligent act or omission of the Design/Build Entity or his agents, employees, or subDesign/Build Entities in whole or in part in connection with the same; or by use of any improper materials or by or on account of any use of any improper materials or by or on account of any act or omission of the said Design/Build Entity or his subDesign/Build Entities, agents, servants or employees
 - b. Design/Build Entity agrees to indemnify and save harmless the County and the Engineer against any liability arising from or based upon the violation of any Federal, State, County or City laws, by-laws, ordinances or regulations by the Design/Build Entity, his subDesign/Build Entities, agents, servants or employees
 - c. Design/Build Entity further agrees to indemnify and save harmless the County and the Engineer from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the County or the Engineer on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against the County or the Engineer for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

2. To the fullest extent permitted by F.S. 725.06, the indemnification provided above shall obligate the Design/Build Entity to defend at his own expense or to provide for such defense, at the County's or Engineer's option, of any and all claims or liability and all suits and actions of every name and description that may be brought against the County or the Engineer which may result from the operations and activities under this Contract whether the construction operations be performed by the Design/Build Entity, his subDesign/Build Entity or by anyone directly or indirectly employed by either.

3. The Design/Build Entity further agrees to obtain, maintain and pay for such general liability insurance coverage as will insure the provisions of this Paragraph and other contractual indemnities assumed by the Design/Build Entity in this Contract.

K. County's Right to Terminate

1. If at any time there shall be filed by or against the Design/Build Entity in any court, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of the Design/Build Entity's property, and within thirty (30) days therefrom the Design/Build Entity fails to secure a discharge thereof, or if the Design/Build Entity makes an assignment for the benefit of creditors or petitions for or enters into an agreement or arrangement with its creditors, or if the Design/Build Entity admits in writing an inability to pay its debts generally as they become due, or if the Design/Build Entity persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under the General Requirements of the Technical Specifications as revised from time to time), or if Design/Build Entity disregards Laws or Regulations of any public body having jurisdiction, or if Design/Build Entity disregards the authority of the Engineer, or if Design/Build Entity otherwise violates in any substantial way any provisions of the Contract Documents, then the County by giving seven (7) days prior written notice of any such default to the Design/Build Entity and without prejudice to any other remedy it may have, may terminate the employment of the Design/Build Entity, exclude Design/Build Entity from the site, and take possession of the Work and all or some of the Design/Build Entity's materials, tools, equipment and appliances and use the same to the full extent they could be used by the Design/Build Entity (without liability to the Design/Build Entity for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which County has paid Design/Build Entity but which are stored elsewhere and complete the Work by such means as the County deems expedient. In such case, the Design/Build Entity shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum shall exceed (1) the expense of completing the Work including compensation for additional managerial and administrative services, plus (2) the County's indirect and consequential losses and damages because of the Design/Build Entity's default, including but not limited to fees and charges of Engineers, Architects, Attorneys and other professionals and court costs, such excess shall be paid to the Design/Build Entity. If such expense, plus the County's losses and damages shall exceed such unpaid balance, the Design/Build Entity shall pay the difference to the County promptly on demand, subject to the provisions of the Resolution of Claims and Disputes section. Such costs incurred by the County shall be approved as to reasonableness by the Engineer and incorporated into a Change Order, but when exercising any rights or remedies under this paragraph, County shall not be required to obtain the lowest price for the Work performed.

2. The County may terminate this Contract without cause by giving seven (7) days prior written notice to the Design/Build Entity, and in such event, the County will pay the Design/Build Entity for that portion of the Contract Sum, less the aggregate of previous payments, allocable to the Work completed as of the Date of Termination. The County also will reimburse the Design/Build Entity for all costs necessarily incurred for organizing and carrying out the stoppage of the Work and paid directly by the Design/Build Entity, not including overhead, general expenses or profit. The County will not be responsible to reimburse the Design/Build Entity for any continuing contractual commitments to subDesign/Build Entities or material suppliers or penalties or damages for canceling such contractual commitments inasmuch as the Design/Build Entity shall make all subcontracts and other commitments subject to this provision. County will not be liable for, and Design/Build Entity hereby waives, any claim for lost prospective profits, economic losses, or other consequential damages.

3. In the event of termination by the County, the County may require the Design/Build Entity promptly to assign to it all or some subcontracts, construction, plant, materials, tools, equipment, appliances, rental agreements, and any other commitments which the County, in its sole discretion, chooses to take by assignment, and in such event the Design/Build Entity shall promptly execute and deliver to the County written assignments of the same.

4. In the event that any termination under subparagraph (2) above is determined to have been effectuated without proper or sufficient cause, then such termination shall be deemed to have been a termination for convenience under subparagraph (3) above.

L. Design/Build Entity's Right to Terminate or Stop Work

If through no act or fault of the Design/Build Entity, the Work is suspended for a period of more than ninety (90) days by the County or under an order of court or other public authority, or the Engineer fails to act on any Application for Payment within thirty (30) days after it is submitted or County fails for sixty (60) days to pay the Design/Build Entity any sum finally determined to be due, then the Design/Build Entity may, upon giving seven (7) days prior written notice to the County and the Engineer, and provided County or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from the County payment on the same terms as provided in K(2), above. In lieu of terminating the Contract and without prejudice to any other right or remedy, if the Engineer has failed to act on an Application for Payment within thirty (30) days after it is submitted, or the County has failed for sixty (60) days to pay the Design/Build Entity any sum finally determined to be due, the Design/Build Entity may upon seven (7) days prior written notice to the County and the Engineer stop the Work until payment is received of all such amounts due the Design/Build Entity.

M. Venue

This Contract shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Contract shall be in a State Court of competent jurisdiction located in Palm Beach County, Florida. Should it become necessary for the County to engage an attorney to enforce this Contract, the Design/Build Entity will pay the County all costs, including a reasonable attorney's fee.

N. Right to Audit

If the Design/Build Entity submits a claim to the County for additional compensation, the County shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the Design/Build Entity's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the Design/Build Entity's plants, or such parts thereof, as may be or have been engaged in the performance of the Work. The Design/Build Entity further agrees that the right to audit encompasses all subcontracts and is binding upon all subDesign/Build Entities. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the County deems desirable during the Design/Build Entities normal business hours at the office of the Design/Build Entity. The Design/Build Entity shall make available to the County for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the County.

O. Notice and Service

1. All notices, demands, requests, instructions, approvals and claims shall be made in writing.
2. Any notice to or demand upon the Design/Build Entity shall be sufficiently given if delivered to such office of the Design/Build Entity specified in the Proposal (or to such other office as the Design/Build Entity may from time to time designate to the County in writing), or if deposited in the United States Mail in a sealed, postage prepaid envelope, or if delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.
3. All notices or other papers required to be delivered by the Design/Build Entity to the County, or to any of its representatives shall, unless otherwise specified in writing to the Design/Build Entity, be delivered to the office of the County's Engineer, and any other notice or demand upon the County shall be sufficiently given if delivered to such office, or if deposited in the United States Mail in a sealed, postage prepaid envelope, or if delivered, with the charges prepaid to any telegraph company for transmission, in each case addressed to such office (or to such other representative of the County or to such other address as the County may subsequently specify in writing to the Design/Build Entity for such purpose).
4. Any such notice or demand shall be deemed to have been given or made as of the time of actual delivery, or, in the case of mailing, when the same should have been received in due course of posts, or in the case of telegrams, at the time of actual receipt thereof.

P. Availability of Funds

The County's performance and obligation to pay under this contract for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

Q. Successors and Assigns

The County and the Design/Build Entity each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as specifically provided herein, neither the County nor the Design/Build Entity shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the County and the Design/Build Entity.

R. Conflicts of Interest

1. The Design/Build Entity represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The Design/Build Entity further represents that no person having any such conflict of interest shall be employed for said performance of services.

2. The Design/Build Entity shall promptly notify the County's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the Design/Build Entity's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Design/Build Entity may undertake and request an opinion of the County as to whether the association, interest or circumstance would, in the opinion of the County, constitute a conflict of interest if entered into by the Design/Build Entity. The County agrees to notify the Design/Build Entity of its opinion by certified mail within thirty (30) days of receipt of notification by the Design/Build Entity. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Design/Build Entity, the County shall so state in the notification and the Design/Build Entity shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by the Design/Build Entity under the terms of this Contract.

S. Criminal History Records Check

The Design/Build Entity shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if Design/Build Entity's employees or subcontractors are required under this contract to enter a "critical facility" as identified in Resolution R-2003-1274. The Design/Build Entity acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although County agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the Design/Build Entity shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

T. Severability

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

U. Public Entity Crimes

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the Design/Build Entity certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3) (a).

V. Authority To Practice

The Design/Build Entity hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the County's representative upon request.

W. Contingent Fees

The Design/Build Entity warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Design/Build Entity to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Design/Build Entity, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

X. Independent Contractor Relationship

The Design/Build Entity is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Design/Build Entity's sole direction, supervision, and control. The Design/Build Entity shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Design/Build Entity's relationship and the relationship of its employees to the County shall be that of an Independent Contractor and not as employees or agents of the County.

The Design/Build Entity does not have the power or authority to bind the County in any promise, agreement or representation.

Y. Arrears

The Design/Build Entity shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The Design/Build Entity further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

Z. Federal And State Tax

The County is exempt from payment of Florida State Sales and Use Taxes. The County will sign an exemption certificate submitted by the Design/Build Entity. The Design/Build Entity shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is the Design/Build Entity authorized to use the County's Tax Exemption Number in securing such materials.

The Design/Build Entity shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

AA. Performance During An Emergency

By executing this agreement, Design/Build Entity agrees and promises that, during and after a public emergency, disaster, hurricane, flood, or acts of God, Palm Beach County shall be given "first priority" for all goods and services under this contract. Design/Build Entity agrees to provide all goods and services to Palm Beach County during and after the emergency/disaster at the terms, conditions, and prices as provided in this agreement and with a priority above, a preference over, sales to the private sector. Design/Build Entity shall furnish a 24-hour phone number to the County in the event of such an emergency. Failure to provide the stated priority/preference during and after an emergency/disaster shall constitute breach of contract and make the Design/Build Entity subject to sanctions from further business with the County.

During, and only during, such periods as Design/Build Entity is authorized to charge Emergency rates for the services required pursuant to Article I – General Conditions, paragraph I, above, the following changes to this agreement shall be in effect:

1. The standard of care for all professional, architectural, engineering, and other related services performed or provided by Design/Build Entity shall be the care and skill normally used by members of the same professions practicing under similar circumstances at the same time in the same locality. CH2M HILL will re-perform any professional, architectural, engineering or related services not meeting this standard without additional compensation.

2. In the General Conditions, Section I - General Provisions, subsection K.1, Section III - Field Services, subsection 42.N, Section III - Field Services, subsection 51.J, Section III - Field Services, subsection 51.K, Section III - Field Services, subsection 53.A, and Section III - Field Services, subsection 53.B, the words "indirect and consequential" will be deleted. The agreement of the parties to the deletion of these terms during periods when Design/Build Entity is being compensated at Emergency rates shall not be construed against either party as authorizing, permitting, waiving, or prohibiting the recovery of such costs or damages.

II. PROFESSION SERVICES

The following provisions relate primarily to Professional Services rendered pursuant to this agreement.

One of Design/Build Entity's responsibilities under this Contract is to provide professional/consultation services as more specifically set forth in the Scope of Work and as more particularly detailed in such CSA(s) as may be issued pursuant to this Contract. Design/Build Entity shall perform no services pursuant to this part until authorized in writing pursuant to an issued CSA.

A. Schedule

The Design/Build Entity shall commence services and complete all services as directed in an issued CSA. Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in such CSA.

B. Payments To Design/Build Entity

1. The total amount to be paid by the County under this Contract for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph 3 below) shall not exceed a total contract amount of all issued CSA(s). For each issued CSA, the Design/Build Entity shall notify the County's representative in writing when 90% of that CSA's "not to exceed amount" has been reached. The Design/Build Entity will bill the County as provided in each CSA. Where incremental billings for partially completed items are permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.

2. Invoices received from the Design/Build Entity pursuant to this Contract will be reviewed and approved by the County's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be handled in accordance with the Florida Local Government Prompt Payment Act.

3. "Out-of-pocket" expenses will be reimbursed as provided for in each issued CSA. All requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Contract. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

4. Final Invoice - In order for both parties herein to close their books and records, the Design/Build Entity will clearly state "final invoice" on the Design/Build Entity's final/last billing to the County for each CSA. This shall constitute Design/Build Entity's certification that all services rendered pursuant to that CSA have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the Design/Build Entity.

C. Excusable Delays

1. The Design/Build Entity shall not be considered in default by reason of any failure in performance if such failure relates to a critical path item and arises out of causes reasonably beyond the control of the Design/Build Entity or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

2. Upon the Design/Build Entity's request, the County shall consider the facts and extent of any failure to perform the work and, if the Design/Build Entity's failure to perform was without it or its subconsultant's fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the County's rights to change, terminate, or stop any or all of the work at any time.

D. Changes

The scope, amount, or time provided for in any CSA may be amended by issuance of a Supplement executed by both parties.

E. Truth-In-Negotiation Certificate

1. Signature of this Contract by the Design/Build Entity shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the Design/Build Entity's most favored customer for the same or substantially similar service.

2. The said rates and costs shall be adjusted to exclude any significant sums should the County determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside consultants. The County shall exercise its rights under this article within three (3) years following final payment.

F. Personnel

1. The Design/Build Entity represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under each issued CSA. Such personnel shall not be employees of or have any contractual relationship with the County.

2. All of the services required pursuant to this Contract shall be performed by the Design/Build Entity or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

3. Any changes or substitutions in the Design/Build Entity's key personnel must be made known to the County's representative and written approval must be granted by the County's representative before said change or substitution can become effective.

4. The Design/Build Entity warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

5. All of the Design/Build Entity's personnel (and all Subcontractors) while on County premises will comply with all County requirements governing conduct, safety and security.

G. Subcontracting Professional Services

1. The County reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant and to inspect all facilities of any subconsultants in order to make a determination as to the capability of the subconsultant to perform properly under this Contract. The Design/Build Entity is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the Design/Build Entity uses any subconsultants on this project the following provisions of this Article shall apply:

2. If a subconsultant fails to perform or make progress, as required by this Contract, and it is necessary to replace the subconsultant to complete the work in a timely fashion, the Design/Build Entity shall promptly do so, subject to acceptance of the new subconsultant by the County.

3. The Design/Build Entity understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

4. The Design/Build Entity shall provide the County with a copy of the Design/Build Entity's contract with any SBE subconsultant or any other related documentation upon request.

5. The Design/Build Entity understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of this Contract as it relates to the use of SBE firms.

6. The Design/Build Entity will only be permitted to replace a certified SBE subconsultant who is unwilling or unable to perform. Such substitutions must be done with another certified SBE in order to maintain the SBE percentages established in this Contract. Requests for substitutions of SBE's must be submitted to the County's representative and to the Office of Small Business Assistance.

7. The Design/Build Entity shall be required to submit to the County Schedule 1 (Participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated, where applicable.

8. The Design/Build Entity agrees to maintain all relevant records and information necessary to document compliance pursuant to Palm Beach County Code, Chapter 2, Article III, Sections 2-71 through 2-80.13 and any revisions thereto, and will allow the County to inspect such records.

III - FIELD SERVICES

TABLE OF CONTENTS

ARTICLE

1	Applicability
2	Not Used
3	Before Starting Construction
4	Pre-construction Conference
5	Amending Contract Documents
6	Reuse of Documents
7	Occupying Private Land
8	Work in State and County Rights-of Way and Easements
9	Work Adjacent to Telephone, Power, Cable TV and Gas Company Structures
10	Use of Public Streets
11	Subsurface Investigation
12	Obstructions
13	Dimensions of Existing Structures
14	Elevation Datum
15	Work to Conform
16	Location of Proposed Work
17	Bonds
18	Not Used
19	Design/Build Entity's Responsibility
20	Discontinuance of Construction
21	Guarantee
22	Field Layout of Work
23	Specifications
24	Handling and Distribution
25	Storage of Materials
26	Salvaged and Excavated Materials
27	Subcontracts
28	Permits
29	Employees
30	Florida Products and Labor
31	Equal Employment Opportunity
32	Sanitary Regulations
33	Taxes
34	Design/Build Entity's Use of Premises
35	Accident Prevention
36	Precautions During Adverse Weather
37	Scheduling
38	Non-assignable
39	Not Used
40	Confidentiality
41	Work by Others
42	Engineer's Responsibility

43	Changes in the Work
44	Change of Contract Price
45	Change Procedures
46	Omitted Work
47	Changes Not to Affect Bonds
48	Continuing the Work
49	Change of Contract Time
50	Extension of Time on Account of Weather/Inclement Weather
51	Materials, Samples and Inspection
52	Inspection of Work Away From the Site
53	One Year Correction Period
54	Application for Progress Payment
55	Partial Utilization
56	Substantial Completion
57	Final Application for Payment
58	Record Documents
59	Final Payment and Acceptance
60	Design/Build Entity's Continuing Obligation
61	Final Payment Terminates Liability of County
62	Not Used
63	Not Used
64	Not Used
65	Title to Materials Found on the Work
66	Not Used
67	Asbestos
68	Explosives and Hazardous Materials
69	Not Used
70	Listing of the Duties, Responsibilities and Limitations of Authority of the Resident Project Representative
71	Resolution of Claims and Disputes
72	Design/Build Entity Furnished Drawings, Data and Samples
73	Design/Build Entity Work-Site Emergency Action Plan
74	Cost Savings
75	Safety and Health Regulations
76	Best Management Practices for the Construction Industry
77	Performance During Emergency

1 **Applicability**

The following terms and conditions apply, primarily, to field work including, but not limited to, efforts to demolish, clean-up, repair, maintain, replace and reconstruct damaged structures and property of the County.

2 **Not Used**

3. Before Starting Construction

A. Design/Build Entity shall not perform any services pursuant to this section until County has issued a Work Authorization for such work.

B. The Design/Build Entity shall submit to the Engineer for review those documents identified in the General Requirements of the Technical Specifications. Before undertaking each part of the Work, the Design/Build Entity shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The Design/Build Entity shall notify the Engineer, in writing, of all conflicts, errors, inconsistencies, or omissions which he may discover; and obtain specific instructions in writing from the Engineer before proceeding with any part of the Work affected thereby. The Design/Build Entity shall not take advantage of any apparent error or omission which may be found in the Contract Documents, but the Engineer shall be entitled to make such corrections therein and interpretations thereof, as he may deem necessary for the fulfillment of their intent. The Design/Build Entity shall be responsible for all errors in construction which could have been avoided by such examination and notification and shall correct at his own expense all Work improperly constructed through failure to notify the Engineer and request specific instructions.

4. Pre-construction Conference

Following the execution of the Contract and prior to start of any construction services, a pre-construction conference will be scheduled by the Engineer, which must be attended by the Design/Build Entity. This conference will be held to review the schedules, to establish procedures for handling shop drawings and other submissions, and to establish a working understanding between the Parties as to the Project. This conference may include representatives of the Engineer, County, local utilities, regulatory agencies, other Design/Build Entities performing work in the area for the County, and any other party that may be deemed as necessary for the orderly performance of the Contract. However, this does not relieve the Design/Build Entity of the responsibility of contacting local utilities and any other necessary agencies or Design/Build Entities.

5 Intent and Amending Contract Documents

A. Amending and Supplementing the Contract Documents

1. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- a. A formal Written Amendment
- b. A Change Order
- c. A Field Order
- d. A work Directive

As indicated in Articles 44 and 49, Contract Price and Contract Time may only be changed by a Change Order.

2. In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, in one or more of the following ways:
 - a. A Field Order
 - b. The Engineer's approval of a Shop Drawing or Sample, provided that Design/Build Entity has called such variation or deviation from the contract requirements to the attention of Engineer in a writing in accordance with GC 72, which specifically identifies the change.
 - c. The Engineer's written interpretation or clarification of the Intent of the Contract Documents.

6. Reuse of Documents

Neither the Design/Build Entity, nor any SubDesign/Build Entity or Supplier, nor any other person or organization performing or furnishing any of the Work under a Contract with the County shall have or acquire any title to or ownership rights in any of the Drawings, Technical Specifications, or other documents (or copies of any thereof) prepared by the Engineer for use on the Work, and they shall not reuse any of them on extensions of the project or any other project without prior written consent of the County and the Engineer.

7. Occupying Private Land

A. The County shall furnish, as indicated in the Contract Documents, the Lands upon which the work is to be performed, Rights-of-way and easements for access thereto, and such other lands which are designated for the use of the Design/Build Entity. These Lands are shown on the Contract Drawings and it is the Design/Build Entity's Responsibility to perform the work within the legally described Limits of the Lands. The Design/Build Entity shall provide for all additional Lands and access thereto required for temporary Construction facilities or storage of equipment and materials.

B. The Design/Build Entity shall not (except after written consent from the proper parties) enter or occupy with personnel, tools, equipment or materials, any land outside the rights-of-way or property of the County. Upon request of the County, the Design/Build Entity shall give a copy of the written consent to the Engineer.

8 Work in State and County Rights-of-Way and Easements

When the Work involves the installation of sanitary sewers, storm sewers, drains, water mains, manholes, underground structures, or other disturbances of existing features in or across streets, rights-of-way, easements, or other property, the Design/Build Entity shall (as the Work progresses) promptly back-fill, compact, grade and otherwise restore the disturbed area to a basic condition which will permit resumption of pedestrian or vehicular traffic and any other critical activity or function consistent with the original use of the land. Unsightly mounds of earth, large stones, boulders, and debris shall be removed so that the site presents a neat appearance.

9 Work Adjacent to Telephone, Power, Water, Sewer, Drainage Cable TV and Gas Company Structures

In all cases where Work is to be performed near utilities including telephone, power, water, sewer, drainage, cable TV, or gas company facilities, the Design/Build Entity shall provide written notification to the respective companies of the areas in which Work is to be performed, prior to the actual performance of any Work in these areas, and shall take all actions necessary to protect such facilities from damage. Design/Build Entity shall comply with all requirements of the state's "One Call" system.

10 Use of Public Streets

The use of public streets and alleys shall be such as to provide a minimum of inconvenience to the public and to other vehicular and non-vehicular traffic. Any earth or excavated material spilled from trucks shall be removed by the Design/Build Entity and the streets cleaned to the satisfaction of the Engineer and the County Engineering Department, the Florida Department of Transportation, or other local agency having jurisdiction, as applicable.

11 Subsurface Investigation

A. In the preparation of the Contract Documents, the Engineer has relied on the reports and tests of subsurface conditions taken at the job site. Such reports are not guaranteed as to their accuracy or completeness and are not part of the Contract Documents.

B. The County and the Engineer do not warrant or guarantee the accuracy or correctness of this material with respect to actual subsurface conditions.

C. The Design/Build Entity shall be responsible for having determined to his satisfaction, prior to the submission of his Proposal, the nature and location of the Work, the conformation of the ground, the character and quality of the substrata, the types and quantity of materials to be encountered, the nature of the ground water conditions, the character of equipment and facilities needed preliminary to and during the execution of the Work, the general and local conditions and all other matters which can in any way affect the Work under this Contract. The prices established for the Work to be done will reflect all costs pertaining to the Work.

12 Obstructions

A. The information and data shown or indicated in the Contract Documents with respect to existing underground utilities at or contiguous to the site and reports of prior property ownership of the site are based on information and data furnished to the County or the Engineer by the owners of such Underground Utilities or others. The County and the Engineer are not responsible for the accuracy or completeness of any such information or data, and the Design/Build Entity shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Utilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Utilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of which will be considered as having been included in the Contract Price.

B. All water pipes, sanitary sewers, storm drains, force mains, gas mains, or other pipe, telephone or power cables or conduits, pipe or conduit casings, curbs, sidewalks, service lines and all other obstructions, whether or not shown, shall be temporarily removed from or supported across all excavations. Where it is necessary to temporarily interrupt services, the Design/Build Entity shall notify the owner or occupant of such facilities, both before the interruption and again immediately before service is resumed. Before disconnecting any pipes or cables, the Design/Build Entity shall obtain permission from their owner, or shall make suitable arrangements for their disconnection by their owner. The Design/Build Entity shall be responsible for any damage to any such pipes, conduits or cables, and shall restore them to service promptly as soon as the Work has progressed past the point involved. Approximate locations of known water, sanitary, drainage, natural gas, power, telephone and cable TV installations along the route of new pipelines or in the vicinity of new work are shown, but are to be verified in the field by the Design/Build Entity prior to performing the Work. The Design/Build Entity shall uncover these pipes, ducts, cables, etc., carefully, by hand, prior to installing his Work. Any discrepancies or differences found shall be immediately brought to the attention of the Engineer in order that necessary changes may be made to permit installation of the Work.

13 Dimensions of Existing Structures

Where the dimensions and locations of existing structures are of critical importance in the installation or connection of new work, the Design/Build Entity shall verify such dimensions and locations in the field before the fabrication of any materials or equipment which is dependent on the correctness of such information.

14 Elevation Datum

The datum adopted by the Engineer is N.G.V.D. of 1929. All elevations on the Drawings or referred to in the Specifications refer to this datum.

15 Work to Conform

A. During its progress and on its completion, all Work shall conform truly to the lines, levels, and grades indicated on the Drawings or given by the Engineer and shall be built in a thoroughly substantial and workmanlike manner, in accordance with the Contract Documents and the written instructions or written directions given from time to time by the Engineer. In no case shall any Work in excess of the requirements of the Contract documents be paid for unless so approved in writing by an appropriately executed change order, work directive or written amendment.

B. All Work done without written instructions having been given therefore by the Engineer, done without proper lines or levels, or done during the absence of the Engineer, or his agent, will not be estimated or paid for except when such Work is authorized in writing by an appropriately executed change order, work Directive or written amendment. Work so done may be ordered uncovered or taken down, removed and replaced entirely at the Design/Build Entity expense.

16 Location of Proposed Work

Piping and structures to be installed by Design/Build Entity, will be located substantially as indicated on the Drawings, but the right is reserved by the County, acting through the Engineer, to make such modifications in location as may be found desirable to avoid interference with existing structures or for other reasons. Where fittings, etc., are noted on the Drawings, such notation is for the Design/Build Entity's convenience and does not relieve the Design/Build Entity from laying and jointing different or additional items where required without additional compensation.

17 Bonds

A. The successful Bidder shall, upon delivery of an executed Work Authorization to the County, deposit with the County a Public Construction Bond, in the form included in these documents, providing for the satisfactory completion of the Work and providing security for payment of all persons performing labor in connection with such Work Authorization. Such bond shall be furnished in an amount equal to 100% of the amount of the Work Authorization award as security for the faithful performance and payment of all Design/Build Entity's obligations under the Work Authorization. The form and conditions of the Bond and the Surety shall be acceptable to the County.

B. The bond shall be written by a Surety Company of recognized standing, licensed to do business in the State of Florida, and having a resident agent in the State of Florida. The Surety Company shall hold a current certificate of authority as acceptable surety on Federal Bonds in accordance with U.S. Department of Treasury, Fiscal Service, Bureau of Government Financial Operations, Circular 570, current revision, entitled, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies". The bond shall be executed by an Attorney-in-Fact for the Surety Company with a certified copy of his Power of Attorney attached to the Bonds.

C. The bonding limit of the Surety Company shall not exceed the limits indicated in the U.S. Department of Treasury listing unless the Surety Company submits a "reinsurance agreement form" indicating the amount above the bonding limit is insured by another Surety Company also on the U.S. Department of Treasury listing.

D. If the Surety Company on any Bond furnished to the County is declared, upon notification of the Insurance Agent, as bankrupt or becomes insolvent or its right or license to do business is terminated in the State of Florida, or it ceases to meet any of the requirements stated herein, the Design/Build Entity shall within ten (10) working days thereafter substitute another Bond and Surety Company at no cost to the County, both of which must be acceptable to the County. If the project is declared more than 90% complete by the Engineer and the County at the time of the Surety's bankruptcy or insolvency, the Design/Build Entity may, at the County's option, obtain a Maintenance Bond in the amount of 100% of the project cost, for the one (1) year warranty period after project completion. The Maintenance Bond shall be submitted on the form provided by the County and shall comply with all of the requirements for Public Construction Bond stated herein.

D. Failure by the Design/Build Entity to substitute satisfactory Bonds under this section shall result in any or all of the following actions by the County:

1. Withholding of all applications for payment until satisfactory bonds are received and accepted, and/or;
2. Default in the Contract and cancellation as provided for in the Contract's default clause, and/or;
3. Suspension of the Design/Build Entity's name from the County's bid list for a period of not less than three (3) years from the date of Surety or Contract default.

18 Compensation

A. Compensation for Work performed pursuant to a Work Authorization shall be as set forth therein. Such compensation may be based upon time and materials for the Cost of Work in accordance with Article 44, or upon an agreed upon lump sum amount, or upon the basis of a Guarantee Maximum Price (GMP) or upon any other legal basis agreed upon by the parties.

B. GMP Agreements

1. If directed by a Work Authorization to perform Work based upon a GMP, Design/Build Entity shall, based upon Drawings and Specifications produced by the Design/Build Entity, develop Guaranteed Maximum Price (GMP) Proposal(s), including, a Project Construction Schedule, itemized by Trade Contract, for phases of Work as required by the County. The GMP shall be based upon 60% construction documents prepared by Design/Build Entity. If the 60% documents are not adequate for the development of a Guaranteed Maximum Price, the Design/Build Entity shall notify the County immediately, prior to developing the GMP. All assumptions made by the Design/Build Entity in the development of the GMP shall be specifically listed in the GMP proposal(s), and the GMP will not be adjusted due to assumptions made by the Design/Build Entity, but not included in the GMP Proposal.

2. If the GMP Proposal is accepted by the County, it will be documented by a Change Order to the applicable Work Authorization, which will establish the GMP, Contract Time, and liquidated damages for that phase of the Work. A Public Construction Bond and Form of Guarantee on the County's standard forms and Builder's Risk Insurance Policy shall be provided by the Design/Build Entity simultaneously with the GMP Amendment.

3. If the GMP proposal is not accepted by the County, the County shall so notify the Design/Build Entity in writing. The Design/Build Entity shall then recommend adjustments to the Work through value engineering. The Design/Build Entity and County will discuss and negotiate these recommendations for no more than 14 calendar days, unless an extension is granted in writing by the County. If an acceptable GMP is not developed, negotiations may be terminated, and the County may initiate negotiations with another contractor or separately bid the project. County shall have full use of all documents obtained or prepared by Design/Build Entity pursuant to any related CSA(s) and WA(s).

C. Development of Guaranteed Maximum Price

1. The "Guaranteed Maximum Price" (GMP) includes Cost of the Work required by the Contract Documents as defined in GC 18(E) herein, and the Design/Build Entity's fee as defined

in GC 18(D) herein. The GMP will be established based on Construction Documents prepared by the Design/Build Entity. The GMP is subject to modification for changes in the Work as provided in General Condition 44, herein.

2. The GMP will only include those taxes in the Cost of the Work which are legally enacted at the time the GMP is established.

3. All cost savings for the not-to-exceed value of the GMP shall be returned to the County as part of the net aggregate savings established when final accounting is submitted upon Final Completion of the Work, or at such earlier time as agreed to by the County and the Design/Build Entity. "Cost savings" are the net difference obtained by deducting from the Adjusted GMP, the documented Design/Build Entity's Fee, the expended portions of the construction contingency and the actual expenditures representing the Cost of the Work as defined in GC 18(E), herein. Liquidated damages, if any, are different from, and are not a part of this calculation.

4. In addition to the cost of work, the GMP will include an agreed upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The Design/Build Entity will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the County. Documentation for use of the Contingency shall be determined by the County. The Engineer shall verify the actual costs. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency. If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency, however such events shall not be cause to increase the GMP.

5. If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Design/Build Entity may perform that portion of the work as acknowledged by the County or negotiate for its performance for the specified line item lump sum amount or less.

6. By execution of this Agreement, the Design/Build Entity certifies that all factual unit costs supporting the fees specified in this Agreement are accurate, complete and current at the time of negotiations; and that any other factual unit costs that may be furnished the County in the future to support any additional fees that may be authorized will also be accurate and complete. The fees specified in this Agreement and any additional fees that may be authorized in the future shall be adjusted to exclude any significant sums by which the County determines the fee was increased due to inaccurate, incomplete, or non-current factual unit costs.

D. Design/Build Entity's Fee for GMP Work includes the following:

1. The cost of its home or branch office employees or consultants not at the Project site, including the cost of all benefits, insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.

2. The cost of its field employees, in the field office, including but not limited to the construction manager and construction superintendents, as may be identified in the GMP proposal, or their approved replacements, including the cost of all benefits, insurance, and taxes attributable to wages and salaries for said field employees.

3. General operating expenses of the Design/Build Entity's principal and branch offices other than the field office.

4. Any part of the Design/Build Entity's capital expenses, including interest on the Design/Build Entity's capital employed for the Work.

5. Overhead and profit, or general expenses of any kind, except as may be expressly included in GC 18(E), herein, as Cost of the Work.

6. All travel and per diem costs of Design/Build Entity's employees and consultants.

7. Administration of direct tax savings purchase program.

8. Expenses such as long distance telephone calls, telephone service at the site, postage, office supplies, expressage, and similar items in connection with the Work.

9. Cost of equipment such as typewriters, cameras, radios, computers, pagers, copiers, facsimile equipment, telephones, dictating units, field offices, trailers, vehicles and furniture purchased or rented by the Design/Build Entity.

10. All costs incurred during the guarantee period after construction.

E. Cost of the Work for GMP pricing

1. The term "Cost of the Work" shall mean costs including General Conditions costs, incurred in the Work as described and defined in GC 18(E)(2), below, and paid or incurred by the Design/Build Entity, which are not included in GC 18(D)(2) above, less any reimbursement for scrap value and cash or trade discounts. The term "wages" used herein shall include the straight time and overtime pay and the cost of associated employee benefits. Employee benefits include, but are not limited to, unemployment compensation, social security, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Design/Build Entity. Employee benefits do not include Workers' Compensation insurance if such insurance is provided by the County.

2. Cost of the Work includes and is limited to actual expenditure for the following cost items:

a. Subject to prior approval by the County, wages paid for labor in the direct employ of the Design/Build Entity other than those provided under GC 18(D) (2), herein, as a part of the Design/Build Entity's Fee in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the County and Design/Build Entity, and including benefits, if any, as may be payable with respect thereto.

b. The cost of all materials, supplies and equipment incorporated in the Work or stored on site, including cost of transportation and storage thereof. At the County's sole

discretion, the County may make payment for materials, supplies and/or equipment stored off-site and bonded.

c. Payments made by the Design/Build Entity to Trade Contractors for their Work performed pursuant to Trade Contracts with the Design/Build Entity.

d. Cost of the premiums for all insurance or bonds including Trade Contractor bonds which the Design/Build Entity is required to procure by this Agreement, or other insurance or bonds subsequently deemed necessary by the Design/Build Entity, and agreed upon by the County. The cost of insurance for the Design/Build Entity, trade contractors, and sub-subcontractors at any tier in the Work shall be excluded for any insurance may provided by the County. If County provides any such insurance, County will so notify Design/Build Entity prior to the execution of the GMP change order.

e. Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Design/Build Entity is liable.

f. Building and operating permit fees, inspection and filing fees, sewer and water fees, and deposits lost for causes other than the Design/Build Entity's own negligence.

g. Cost of removal and disposal of all debris including clean-up and trash removal.

h. Cost incurred due to an emergency affecting the safety of persons and/or property.

i. Subject to prior written approval by County, legal costs reasonably, and properly, resulting from prosecution of the Work for the County provided, however, that they are not the result of the Design/Build Entity's own negligence or malfeasance. Legal costs incurred in connection with disputes solely between the Design/Build Entity and the County or incurred in connection with disputes solely between the Design/Build Entity and Trade Contractors are the responsibility of the Design/Build Entity and shall not be included in the Cost of the Work.

j. Cost to the Design/Build Entity of temporary electric power, lighting, water, sanitary facilities, and heat required for the performance of the Work, or required to protect the Work from weather damage.

k. Cost to the Design/Build Entity of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary project signs and costs of permits and fees pursuant to the General Conditions of the Contract.

l. Cost of watchmen or similar security services.

m. Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Agreement.

n. Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Trade Contracts.

o. All costs for reproduction of documents to directly benefit the work.

p. Costs directly incurred in the performance of the Work and not included in the Design/Build Entity's Fee as set forth in GC 18(D) above.

q. Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen which are employed or consumed in the performance of the Work.

r. Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Design/Build Entity or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.

s. Costs associated with setting up and demobilizing tool sheds, temporary fences, temporary roads, and temporary fire protection.

19 Design/Build Entity's Responsibility

A. The Design/Build Entity 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. The Design/Build Entity shall be solely and wholly responsible for the means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incidental thereto. The Design/Build Entity shall be responsible to see that the finished Work complies accurately with the Contract Documents and for the good condition of the Work and materials until Final Acceptance by the County. The Design/Build Entity shall bear all losses resulting on account of the weather, fire, the elements, or other causes of every kind or nature prior to Final Acceptance.

B. The Design/Build Entity shall designate in writing and keep on the Work site at all times during progress of the Work, a technically qualified Design/Build Entity, who shall not be replaced without prior written notice to the County and the Engineer. The Design/Build Entity shall be the Design/Build Entity's representative at the site and shall have full authority to act on behalf of the Design/Build Entity. All communications given to the Design/Build Entity shall be as binding as if given to the Design/Build Entity. The Design/Build Entity shall issue all its communications to the County through the Engineer.

C. The Design/Build Entity's Design/Build Entity shall be present at the site of the Work at all times while Work is in progress. Failure to observe this requirement shall be considered as suspension of the Work by the Design/Build Entity until such time as a Design/Build Entity is again present at the site.

D. All materials shall be supplied and the Work shall be done in accordance with the rules, requirements, regulations and directives of various Building Departments and such other State, County, or City Departments having jurisdiction over the same and in accordance with the requirements of the representatives of the mortgagee or mortgagees, if any, or any other governmental bureau, agency, or department interested in this job either directly or indirectly. Design/Build Entity shall be responsible for making himself aware of any laws or ordinances which may affect Design/Build Entity's access to the project, the times of day when Design/Build Entity may prosecute the work or in any other way affect Design/Build Entity's performance of the Work. County will not be liable to Design/Build Entity for any action of any other governmental or private entity or agency which impacts Design/Build Entity's costs or schedule for completing the Work.

E. Except as otherwise provided in this Article, the Design/Build Entity shall receive no additional compensation for overtime work, i.e., work in excess of eight (8) hours in any one calendar day or forty (40) hours in any one calendar week, even though such overtime work may be required under emergency conditions and may be ordered by the Engineer in writing. Additional compensation will be paid to the Design/Build Entity for overtime work only in the event that Emergency Services or extra work are ordered by the Engineer and the WA, change order, or work directive specifically authorizes the use of overtime work and then only to such extent as overtime wages are regularly being paid by the Design/Build Entity for overtime work of a similar nature in the same locality.

F. All costs of field observations, inspection and testing performed by the Engineer during overtime work by the Design/Build Entity which is allowed solely for the convenience of the Design/Build Entity shall be borne by the Design/Build Entity, based upon Engineer's salary rates plus fringe benefits, overhead, profit and indirect costs in accordance with the terms of the Engineer's Contract with the County. The County shall have the authority to deduct the cost of all such inspection and testing from any partial payments otherwise due to the Design/Build Entity.

G. Unless otherwise specified in the Contract Documents, the Design/Build Entity shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, drainage, sanitary facilities, and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up, and Final Completion of the Work. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, Design/Build Entity, without special instruction or authorization from Engineer or County, is obligated to act to prevent threatened damage, injury or loss. Design/Build Entity shall give Engineer prompt written notice if Design/Build Entity believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive or Change Order will be issued to document the consequences of the changes or variations.

20 Discontinuance of Construction

A. The Design/Build Entity agrees and guarantees to perform the above mentioned Work in accordance with the terms stated herein, irrespective of any strikes, lockouts, or stoppages, and the Design/Build Entity shall not knowingly employ men, means, materials, or equipment which

a reasonable person would understand would create a substantial possibility of causing strikes, work stoppages, or any disturbances by workmen employed by the Design/Build Entity.

B. In the event the County is prevented from proceeding with any or all of this Work as stated in this Contract, due to a declaration of war, or national emergency, by the United States government, whereas the construction of the type contracted for herein is specifically prohibited by statute or governmental edict, or due to the stoppage of construction caused by any governmental agency, State, City, Town, or County regulations, orders, restrictions, or due to circumstances beyond the County's control, then the County herein reserves the right to either suspend the Work to be done for an indefinite period of time or to cancel this Contract outright by giving notice by registered mail of such intention to the Design/Build Entity herein. In the event of any conditions above mentioned occurring after the Work herein has already been commenced, then the County herein shall be liable for only the cancellation or suspension without the addition of prospective profits or other charges whatsoever.

21 Guarantee

The Design/Build Entity guarantees that the Work and service to be performed under the Contract and all workmanship, materials, and equipment performed, furnished, used, or installed in the Work shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the Contract Documents; that the strength of all parts of all manufactured equipment shall be adequate and as specified; and that performance test requirements of the Contract shall be fulfilled. The Design/Build Entity shall remedy all defects in the Work and shall repair, correct, or replace all damage to the other Work, persons or property resulting from failures covered by the guarantee. The guarantee shall remain in effect for one (1) year from the date of final acceptance unless a longer period is specified. The County shall give notice of observed defects with reasonable promptness. Unremedied defects identified for correction during the guarantee period but remaining after its expiration shall be considered as part of the obligations of the guarantee. Defects in material, workmanship, or equipment which are remedied as a result of obligations of the guarantee shall subject the remedied portion of the Work to an extended guarantee period of one (1) year after the defect has been remedied. The Surety shall be bound with and for the Design/Build Entity in the Design/Build Entity's faithful observance of the guarantee.

22 Field Layout of Work

A. All Work under this Contract shall be constructed in accordance with the lines and grades shown on the Contract Drawings or as approved by the Engineer in writing. Elevation of existing ground, structures and appurtenances are believed to be reasonably correct but are not guaranteed to be absolute and therefore are presented only as an approximation.

B. All survey work for construction control purposes shall be made by a land surveyor registered in the State of Florida with demonstrated experience in the project area who shall be employed by the Design/Build Entity at his expense. The Design/Build Entity shall establish all base lines for the location of the principal component parts of the Work together with permanent benchmarks and temporary bench marks adjacent to the Work. Based upon the information provided by the Contract Drawings, the Design/Build Entity shall develop and make all detail surveys necessary for construction including establishment or construction of grid coordinates as

shown on the Contract Drawings, location of property boundaries, stakes for all working points, lines and elevations.

C. The Design/Build Entity shall have the responsibility to carefully preserve all benchmarks, reference points and stakes. In case of destruction thereof by the Design/Build Entity resulting from his negligence, or for any other reason, he shall be held liable for any expense and damage resulting therefrom and shall be responsible for any mistakes that may be caused by the unnecessary loss or disturbance of such bench marks, reference points and stakes. Existing or new control points, property markers, and monuments that will be established or are destroyed during the normal causes of construction shall be re-established by the Design/Build Entity; and all reference ties recorded therefore shall be furnished to the Engineer. All computations necessary to establish the exact position of the Work shall be made and preserved by the Design/Build Entity.

23 Specifications

Where any materials, articles, items, equipment, or processes are specified by one or more trade or brand names, the substitution of unnamed materials, articles, items, equipment, or processes will not be allowed. Where the words "equivalent", "proper", "equal to", or "or Equal" are used, they shall be understood to mean that the referred to materials, items, equipment, articles or processes shall be the equivalent of, or equal to some other materials, items, equipment, articles or processes in the opinion or judgment of the Engineer. Unless otherwise specified, all materials, items, equipment, articles or processes shall be the best of their respective kinds and shall be in all cases, fully equal to samples acceptable to the Engineer. Even though the words "or equal" or other such expressions may be used in the Specifications, unless a substitute is accepted in writing by the Engineer, the Engineer shall have the right to require the use of such specifically designated material, equipment, items, articles or processes named in the Specifications.

24 Handling and Distribution

A. The Design/Build Entity shall, at his own expense, handle, haul and distribute all materials and all surplus materials on the different portions of the Work, as necessary. Suitable and adequate storage room for materials and equipment shall be furnished until the Final Acceptance of the Work.

B. Storage charges and demurrage charges by transportation companies and vendors, which result from delays in handling, shall be borne by the Design/Build Entity.

25 Storage of Materials

A. Suitable storage facilities shall be furnished by the Design/Build Entity. All materials, supplies and equipment intended for use in the Work shall be stored by the Design/Build Entity in accordance with the recommendations of the associated manufacturer or supplier to prevent damage from exposure, contamination by foreign substances, or vandalism. The Engineer may refuse to accept, or sample for testing, materials, supplies, or equipment that have been improperly stored. Materials, supplies and equipment found unfit for use shall not be incorporated in the Work and shall immediately be removed from the construction or storage site and replaced at no cost to the County.

B. Should the Design/Build Entity build temporary structures for housing workers, tools, machinery and supplies, they shall be permitted only at places acceptable under Local codes, Ordinances, Laws, Rules, and Regulations, and their surroundings shall be maintained at all times in a satisfactory and sanitary manner. On or before the completion of the Work, all such structure shall be removed in their entirety, together with all rubbish and trash, at the expense of the Design/Build Entity.

26 Salvaged Materials

In the absence of special provisions to the Contract, salvaged materials, equipment or supplies that occur are the property of the County and shall be stored as directed by the Engineer, or shall be properly disposed of by the Design/Build Entity at his sole cost, if directed by the Engineer.

27 Subcontracts

A. As soon as practical after execution of the Contract, the Design/Build Entity shall notify the Engineer and request approval in writing, of the use of subDesign/Build Entities proposed for the Work and shall not employ any that the Engineer may, within a reasonable time, determine are not performing the work in strict conformance with the Contract Documents, or approved changes thereto.

B. The Design/Build Entity agrees that he is as fully responsible to the County for the acts and omissions of his subDesign/Build Entities and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

C. Nothing contained in the Contract Documents shall create any contractual relation between any subDesign/Build Entity and the County.

D. The Design/Build Entity shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subDesign/Build Entities to the Design/Build Entity by the terms of the General Conditions, the Supplemental General Conditions and other Contract Documents insofar as applicable to the Work of subDesign/Build Entities, and to give the Design/Build Entity the same power as regards to terminating any subcontract that the County may exercise over the Design/Build Entity under any provision of the Contract Documents. The Design/Build Entity shall require subDESIGN/BUILD ENTITIES to post a payment and performance bond satisfactory to County if the SubDesign/Build Entity is performing work that represents more than 15% of the Work.

28 Permits

A. The Design/Build Entity shall assist the County in preparing applications for and in obtaining any environmental permits as may be necessary for the prosecution of the Work. If such assistance is deemed to fall within the scope of Professional Services, Design/Build Entity shall notify County and request an appropriate CSA.

B. The Design/Build Entity shall, obtain all other necessary permits, licenses, royalties, inspections and certificates pertaining to the Work and shall comply with all Federal, State,

Municipal and local laws, ordinances, rules, regulations, orders, notices and requirements, whether or not provided by the Drawings, Specifications, General Conditions or other parts of the Contract Documents without additional charge or expense to the County and shall also be responsible for and correct at its own cost and expense, any violations thereof resulting from and in connection with its performance of the Work.

29 Employees

A. All labor described in these Specifications or indicated on the Drawings and the Work specified or indicated shall be executed in a thoroughly substantial and workmanlike manner by mechanics skilled in the applicable trades.

B. Any person employed on the Work who fails, refuses or neglects to obey the instructions of the Construction Manager in anything relating to this Work, or who appears to the Construction manager to be disorderly, intoxicated, insubordinate, unfaithful or incompetent, shall upon the order of said Construction Manager, be at once remove from all County work sites and not again employed in any part of the Work. Any interference with, or abuse or threatening conduct toward the Engineer or his inspectors by the Construction Manager or his employees or agents, shall be authority for the County to annul the Contract and re-let the Work. No intoxicating substance shall be allowed on the Work.

30 Florida Products and Labor

The Design/Build Entity's attention is called to Section 255.04, Florida Statutes, which requires that on public building contracts, Florida products and labor shall be used wherever price and quality are equal.

31 Equal Employment Opportunity

The Design/Build Entity shall not discriminate against employees or applicants for employment because of sex, race, color, religion, disability, age, ancestry, marital status, sexual orientation, or national origin. The Design/Build Entity will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their sex, race, color, religion, disability, age, ancestry, marital status, sexual orientation, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Design/Build Entity agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

32 Sanitary Regulations

A. The Design/Build Entity shall provide adequate sanitary conveniences for the use of those employed on the Work. Such conveniences shall be made available when the first employees arrive on the Work, shall be properly secluded from public observation, and shall be constructed and maintained in suitable numbers and at such points and in such a manner as may be required by Local codes, Ordinances, Laws, Rules and Regulations.

B. The Design/Build Entity shall maintain the sanitary facilities in a satisfactory and sanitary condition at all times and shall enforce their use. He shall rigorously prohibit the committing of nuisances on the site of the Work, on the lands of the County, or on adjacent property.

C. The County and the Engineer shall have the right to inspect any building or other facility erected, maintained, or used by the Design/Build Entity, to determine compliance with these Sanitary Regulations.

33 Taxes

The Design/Build Entity shall pay all sales, consumer, use, and other similar taxes required to be paid by the Design/Build Entity in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

34 Design/Build Entity's Use of Premises

The Design/Build Entity's use of the project site shall be limited to its construction operations, including on-site storage of materials, on-site fabrication facilities, and field offices.

35 Accident Prevention

A. No laborer or mechanic employed in the performance of this Project shall be required to work under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.

B. The Design/Build Entity shall appoint a qualified and experienced safety representative and shall exercise proper caution at all times for the protection of persons and property and shall be responsible for all damage to persons or property, either on or off the work site, which occur as a result of his prosecution of the Work. The safety provisions of applicable laws and building and construction codes shall be observed and the Design/Build Entity shall take or cause to be taken such additional safety and health measures as the Local Public Agency involved may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the "Manual of Accident Prevention in Construction" as published by the Associated General Contractors of America, Inc., to the extent that such provisions are not in conflict with applicable laws.

C. The Design/Build Entity shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on Work under the Contract. The Design/Build Entity shall promptly furnish the Local Public Agency with reports concerning these matters.

D. The Design/Build Entity shall indemnify and save harmless the County and the Engineer from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any Work conducted under this Contract.

36 Precautions During Adverse Weather

A. During adverse weather, and against the possibility thereof, the Design/Build Entity shall take all necessary precautions to insure that the Work shall be done in a good and workmanlike condition and is satisfactory in all respects. When required, protection shall be provided by the use of tarpaulins, wood and building paper shelters, or other acceptable means. The Design/Build Entity shall be responsible for all changes caused by adverse weather, including unusually high winds and water levels and he shall take such precautions and procure such additional insurance as he deems prudent.

B. The Design/Build Entity may suspend construction operations at any time when, in his judgment, the conditions are unsuitable or the proper precautions are not being taken, whatever the weather or water level conditions may be, in any season.

37 Scheduling

The Design/Build Entity shall prepare, submit, and maintain construction schedules in accordance with the General Requirements of the Technical Specifications.

38 Non-assignable

Neither this Contract, nor any monies due hereunder, or any part thereof, shall be assigned, transferred, or sublet by Design/Build Entity, nor shall County be liable to any assignee or transferee, or sublease, without the written consent of the County, and without consent to the assignment, transfer, or sublease, the County shall not release or discharge Design/Build Entity from any obligation hereunder. County shall not consider its approval to an assignment unless the Surety on the Contract Public Construction Bond has informed the County in writing that it consents to the assignment.

39 Not Used

40 Confidentiality

In the performance of the Work, the Design/Build Entity may be exposed to the confidential information of the County and others. The Design/Build Entity shall not disclose to anyone not employed by the County nor use, except on behalf of the County, any such confidential information acquired by it in the performance of the Work except as authorized by the County in writing and, regardless of the term of this Contract, the Design/Build Entity shall be bound by this obligation until such time as said confidential information shall become part of the public domain. Information regarding all aspects of the County's business and information concerning the Work (either directly or indirectly disclosed to it or developed by it in the performance of the Work) shall be presumed to be confidential except to the extent that same shall have been published or otherwise made freely available to the general public without restriction. The Design/Build Entity also agrees that it will not disclose to the County any information it holds subject to any obligation or confidence to any third persons or parties.

41 Work by Others

A. The County may perform additional Work related to the Project by itself, or he may let other direct contracts therefor which shall contain General Conditions similar to these. The Design/Build Entity shall afford the other Contractors or Design/Build Entities, who are parties to such direct contracts (or the County, if it is performing the additional work himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of the Work, and shall properly connect and coordinate his Work with theirs.

B. If any part of the Design/Build Entity's Work depends on proper execution or results upon the Work of any such other Contractor or Design/Build Entity (or County), the Design/Build Entity shall inspect and promptly report to the Engineer, in writing, any defects or deficiencies in such Work that render it unsuitable for such proper execution and results. His failure to so report shall constitute an acceptance of the other Work as fit and proper for the reception of his Work except as to defects and deficiencies, which may appear in the other Work after the execution of the Work under this Contract.

C. The Design/Build Entity shall do all cutting, fitting and patching of his Work that may be required to make its several parts come together properly and fit it to receive or be received by such other Work. The Design/Build Entity 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 Engineer and of the other Design/Build Entity's whose Work will be affected.

D. If the performance of additional Work by other Design/Build Entity's or the County is not noted in the Contract Documents prior to the execution of the Contract, written notice thereof shall be given to the Design/Build Entity by the Engineer prior to starting any such additional Work.

42 Engineer's Responsibility

A. The supervision of the execution of this Contract is vested wholly in the Design/Build Entity. The orders, instructions, directions, or requests of the County are to be given through the County's Engineer. The County's Engineer shall transmit them promptly to the Design/Build Entity as coming from the County and originating in the County. The Design/Build Entity shall designate a representative to receive such instructions, directions or requests in his absence and, failing to do so, will be held responsible for the execution of them.

B. The Engineer shall have the authority to suspend the Work wholly or in part for such period or periods as may be deemed necessary due to failure on the part of the Design/Build Entity to carry out orders given to perform any or all provisions of the Contract. This right of the Engineer to stop the Work shall not give rise to any duty on the part of the Engineer to exercise this right for the benefit of the Design/Build Entity or any other party. The Design/Build Entity shall not suspend the Work and shall not remove any equipment, tools, lumber or other materials without the written permission of the County's Engineer.

C. The County's Engineer shall have free access to the materials and the Work at all times for measuring or observing the same, and the Design/Build Entity shall afford him all necessary facilities and assistance for so doing.

D. After written authorization to proceed with the Work, the Engineer shall:

1. Make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents; not be responsible for the construction means, methods, procedures, techniques and sequences of construction and will not be responsible for the Design/Build Entity's failure to perform the construction Work in accordance with the Contract Documents; not be responsible for safety precautions and procedures in connection with the Work; and during such visits and on the basis of on-site observations, as an experienced and qualified design professional, will keep the County informed of the progress of the Work, will endeavor to guard the County against defects and deficiencies in the Work of the Design/Build Entity and may reject Work as failing to conform to the Contract Documents.
2. Issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.
3. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of materials and equipment and other data, which the Design/Build Entity is required to submit, only for conformance with the design concept of the project and compliance with the information given by the Contract Documents, and assemble written guarantees, which are required by the Contract Documents.
4. Consult with and advise the County, act as the County's representative at the project site, issue all instructions of the County to the Design/Build Entity and prepare routine change orders as required.
5. Based on on-site observations, as an experienced and qualified design professional and on the review of the Design/Build Entity's applications for payment, determine the amount owing to the Design/Build Entity and approve in writing payment to the Design/Build Entity in such amounts; such approvals of payment to constitute a representation to the County, based on such observations and review of data comprising such applications, that the Work has progressed to the point indicated and that, to the best of its knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents, subject to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the approval. Such partial and final payments will be as specified elsewhere herein except as modified in this paragraph.
6. Conduct, in the company of the County, a final inspection and an "eleventh month inspection" of the Project for conformance with the design concept of the project and compliance with the information given by the Contract

Documents, and recommend to the County, in writing, acceptance of the Project for ownership and final payment to the Design/Build Entity in accordance with Article 59 "Final Payment and Acceptance."

E. The Engineer will be the initial interpreter of the requirements of the Contract Documents.

F. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Design/Build Entity. Engineer will review with Design/Build Entity the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). The Engineer has agreed to participate in the use of a partnering cooperative approach to problem solving.

G. Neither the Engineer's authority to act under this Article or other provisions of the Contract Documents nor any decision made by the Engineer, in good faith either to exercise or not exercise such authority, shall give rise to any duty or responsibility of the Engineer to the Design/Build Entity, any SubDesign/Build Entity, any Supplier, any Surety, or any other person or organization performing any of the Work.

H. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as reviewed", "as approved", or terms of the like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of the like effect or import are used to describe a requirement, direction, review, or judgment of the Engineer as to the Work, it is intended that such requirements, direction, review, or judgment will be solely to evaluate the Work for compliance with the Contract Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective shall not be effective to assign to the Engineer any duty or authority to undertake responsibility.

I. The authority and duties of the resident project representative are limited to examining the material furnished, observing the Work done, and reporting their findings to the Engineer. The Engineer does not underwrite, guarantee or insure the Work done by the Design/Build Entity. It is the Design/Build Entity's responsibility to perform the Work in all details in accordance with the Contract Documents. Failure by the Engineer or by any inspectors or other representatives of the County engaged in on-site observation to discover defects or deficiencies in the Work of the Design/Build Entity shall never, under any circumstances, relieve the Design/Build Entity from his liability therefore to the County. Inspectors shall have no authority to permit deviations from or to modify any of the provisions of the Drawings or Specifications without the written permission or instruction of the Engineer.

J. The Engineer, his representatives, employees, or any resident project representative in employment of the Engineer shall have no authority to supervise, direct, expedite or otherwise control and instruct or order the Design/Build Entity or his employees in the fulfillment of the Design/Build Entity's obligation. The County's instructions, orders, directions and/or orders to the Design/Build Entity shall be given only through the Engineer, or his employees.

K. The Engineer shall have the authority to disapprove or reject work which the Engineer believes to be defective or that the Engineer believes will not produce a completed project that conforms to the Contract Documents or that will prejudice the integrity of the construction of the

completed Project as a functioning whole as indicated by the Contract Documents. The Engineer shall also have the authority to require special inspections or testing of the Work as provided in Article 51 of these specifications, whether the Work is fabricated, installed or completed.

L. If any Work (including the Work of subDesign/Build Entities) that is to be inspected, tested or approved is covered without written concurrence of the Engineer, it must, if requested by the Engineer, be uncovered for observation. Such uncovering shall be at the Design/Build Entity's sole expense unless the Design/Build Entity has given the Engineer timely notice of the Design/Build Entity's intention to perform such test or to cover the same and the Engineer has not acted with five (5) days in response to such notice.

M. If any Work is covered contrary to the written request of the Engineer, it must, if requested by the Engineer, be uncovered for the Engineer's observation and replaced at the Design/Build Entity's sole expense.

N. If the Engineer considers it necessary or advisable that covered Work be observed by the Engineer or inspected or tested by others, the Design/Build Entity, at the Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection or testing as the Engineer 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, the Design/Build Entity shall bear all direct, indirect and consequential costs and damages of such uncovering, exposure, observation, inspection and testing and of satisfactory re-construction, including but not limited to fees and charges of engineers, attorneys and other professionals. However if such Work is found not to be defective, the Design/Build Entity shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and re-construction; and if the parties are unable to agree as to the amount or extent thereof, the Design/Build Entity may make a claim therefore as provided in Articles 44 and 49.

O. The payment of any compensation, regardless of its character or form, or the giving of any gratuity, or the granting of any valuable favor, directly or indirectly, by the Design/Build Entity to any project representative, is strictly prohibited and any such act on the part of the Design/Build Entity will constitute a violation of the Contract.

43 Changes in the Work

A. Without invalidating the Contract and without notice to any Surety, County may, at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by a Written Amendment, Work Authorization, a Change Order, or a Work Directive Change. Upon receipt of any such document, Design/Build Entity shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If County and Design/Build Entity are unable to agree on the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made thereof as provided in Article 44 or Article 49.

C. Design/Build Entity shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided, except in the case of an emergency as provided in Article 19.

D. County and Design/Build Entity shall execute appropriate Change Orders (or Written Amendments) covering:

1. Changes in the Work which are ordered by County, or are required because of acceptance of defective work under Article 51 or correcting defective Work under Article 53, or are agreed to in writing by the parties;
2. Changes in the Contract Price or Contract Time which are agreed to in writing by the parties; and,
3. Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by Engineer pursuant to ADR, provided that, in lieu of executing any such Change Order, Design/Build Entity or County may litigate any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such ADR and litigations, Design/Build Entity shall carry on with the Work and adhere to the Progress Schedule as provided in Article 49.

E. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a Surety, the giving of any such notice will be Design/Build Entity's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

F. All changes to the contract must comply to Palm Beach County Board of County Commissioners Resolution R-89-633, any revisions thereto and any other policies enacted by the Board of County Commissioners in relation to contract changes.

44 Change of Contract Price

A. General

1. The Contract price constitutes the total compensation (subject to adjustments authorized in writing) payable to Design/Build Entity for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Design/Build Entity shall be at his expense without change in the Contract Price.
2. The Contract Price may only be changed by a Work Authorization or Change Order. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to the Engineer promptly (but in no event later than thirty (30) days) after occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty (60) days

after such occurrence (unless the Engineer allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by ADR if County and Design/Build Entity cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this Article.

3. The value of any Work covered by a Work Authorization, Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:
 - a. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.
 - b. By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph C.1.
 - c. On the basis of the Cost of the Work (determined as provided in paragraphs B.1 and B.2) plus a Design/Build Entity's Fee for overhead and profit (determined as provided in paragraphs C.1 and C.2).

B. Cost of the Work

1. The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design/Build Entity in the proper performance of the Work. Except as otherwise may be agreed to in writing by County, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph B.2.
 - a. Payroll costs for employees in the direct employ of Design/Build Entity in the performance of the Work under schedules of job classifications agreed upon by County and Design/Build Entity. Payroll costs for employees not employed full time in the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment compensation, excise and payroll taxes, worker's or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation pay and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by the County.
 - b. Costs of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and supplier's field services required in connection therewith.

- c. Payments made by Design/Build Entity to the SubDesign/Build Entity's for Work performed by SubDesign/Build Entity's.
- d. Cost of special consultants including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.
- e. Supplemental costs including the following:
 - (i) The proportion of necessary transportation, travel and subsistence expenses of Design/Build Entity's employees incurred in the discharge of duties connected with the Work.
 - (ii) Costs, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and costs less market value of such items used but not consumed which remain the property of Design/Build Entity.
 - (iii) Rentals of all construction equipment and machinery and the parts thereof whether rented from Design/Build Entity or others. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for completion of the Work or any portion thereof for which the equipment, machinery or parts are specifically required. For special equipment and machinery such as power driven pumps, concrete mixers, trucks, front-end loaders, backhoes, and tractors, or other equipment required for the economical performance of the authorized Work, the Design/Build Entity shall receive payment based weekly rate divided by 40 to arrive at an hourly cost. The weekly rate shall be from the latest edition of the Rental Rate Blue Book for Construction Equipment, published by Equipment Guide Book Co., reduced by twenty-five percent (25%). Equipment cost shall be calculated based upon the actual time used on the Work. If said Work requires the use of machinery not on the Work or not to be used on the Work, the cost of transportation, not exceeding a distance of one hundred (100) miles, of such machinery to and from the Work shall be added to the fair rental rate; provided, however, that this shall not apply to machinery or equipment already required to be furnished under the terms of the Contract. If, because of the emergency nature of Design/Build Entity's Work, the equipment or machinery described herein is not available at the rates described herein or within the locale described, Design/Build Entity may obtain such equipment or machinery from the best available source at the best available rate provide such acquisition is approve in advance, in writing, by County. For the purposes of this exception, such writing may be evidenced by an e-mail or facsimile transmission.
 - (iv) Sales, consumer, use or similar taxes related to the Work, and for which Design/Build Entity is liable, imposed by Laws and Regulations.

(v) The cost of utilities, fuel and sanitary facilities at the site.

(vi) Minor expenses such as telegrams, long distance phone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

(vii) Cost of premiums for additional Bonds and insurance required because of changes in the Work and for premiums for property insurance coverage within the limits of the deductible amounts established by County in accordance with Article 18.

2. The term Cost of Work shall not include any of the following:

- a. Payroll costs and other compensation of Design/Build Entity's officers, executives, principals (or partnerships and sole proprietorships), general managers, project managers, construction managers, engineers, architects, attorneys, auditors, accountants, purchasing and contract agents, expeditors, timekeepers, clerks and other personnel employed by Design/Build Entity whether at the site or in Design/Build Entity's principal office or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph B.1.a or specifically covered by paragraph B.1.d, all of which are considered administrative costs covered by the Design/Build Entity's fee.
- b. Expenses of Design/Build Entity's principal and branch offices other than Design/Build Entity's office at the site.
- c. Any part of Design/Build Entity's capital expenses, including interest on Design/Build Entity's capital employed for the Work and charges against Design/Build Entity for delinquent payments.
- d. Cost of premiums for all Bonds and for all insurance whether or not Design/Build Entity is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph B.1.e.vii above).
- e. Costs due to the negligence of Design/Build Entity, any subDesign/Build Entity, or anyone directly or indirectly employed by any of them or for those acts any of them may be liable for, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- f. Other overhead or general expense costs of any kind and the costs of any items not specifically and expressly included in paragraph B.1.

C. Design/Build Entity's Fee

1. The Design/Build Entity's Fee allowed for overhead and profit shall be determined as follows:
 - a. A mutually acceptable fixed fee, or if none can be agreed upon, a fee based on the following percentages of the various portions of the Cost of the Work:
 - (i) For costs incurred under paragraphs B.1.a and B.1.b, the Design/Build Entity's Fee shall be fifteen percent (15%).
 - (ii) For costs incurred under paragraph B.1.c, the Design/Build Entity's Fee shall be ten percent (10%); and if a subcontract is on the basis of Cost of the Work plus a Fee, the maximum allowable fee to Design/Build Entity on account of overhead and profit of all subDesign/Build Entities shall be fifteen percent (15%).
 - (iii) No fee shall be payable on the basis of costs itemized under paragraph B.1.d, B.1.e, and B.2.
 - (iv) The amount of credit to be allowed by Design/Build Entity to County for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in Design/Build Entity's Fee by an amount equal to ten percent (10%) of the net decrease; and,
 - (v) When both additions and credits are involved in any one change, the adjustment in Design/Build Entity's Fee shall be computed on the basis of the net change in accordance with paragraphs C.1.b.i through C.1.b.iv, inclusive.
2. Whenever the cost of any Work is to be determined pursuant to paragraph B.1 or B.2, Design/Build Entity will submit in a form acceptable to the Engineer an itemized cost breakdown together with supporting data.
3. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract. The estimated quantities of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design/Build Entity will be made by Engineer. Each Unit price will be deemed to include an amount considered by Design/Build Entity to be adequate to cover Design/Build Entity's overhead and profit for each separately identified item.

Where the quantity of any item of Unit Price Work performed by Design/Build Entity differs materially and significantly from the estimated quantity of such item indicated in the Contract and there is not a corresponding adjustment with respect to any other item of Work and if Design/Build Entity believes that Design/Build Entity has

incurred additional expense as a result thereof, Design/Build Entity may make a claim for an increase in the Contract Price in accordance with ADR if the parties are unable to agree as to the amount of any such increase.

45 Change Procedures

A. Minor Changes:

The Engineer will advise the Design/Build Entity, in writing, of minor changes in the Work not involving an adjustment to Contract Price or Contract Time by issuance of a Field Order.

B. Other Changes:

1. The County, through its Engineer may, at any time, without notice to the surety, by written order designated or indicated to be a Work Authorization or Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:
 - a. In the Specifications (including drawings and designs);
 - b. In the time, method or manner of performance of the Work;
 - c. In the County furnished facilities, equipment, materials, services, or site; or
 - d. Directing acceleration in the performance of the Work.
2. Any other written order (which terms as used in this paragraph shall include direction, instruction, interpretation, or determination) from the County, which causes any change, shall be treated as a change order under this clause, provided that the Design/Build Entity gives the County written notice not later than ten (10) days after the occurrence of the event giving rise to the claim but prior to incurring any expense stating the date, circumstances, and source of the order and that the Design/Build Entity regards the order as a Change Order.
3. Except as provided in this Article, no order, statement, or conduct of the County shall be treated as a change under this clause or entitle the Design/Build Entity to an equitable adjustment, and this Article shall not allow, nor be construed to allow, a claim otherwise disallowed by the Contract Documents.
4. If any change under this clause causes an increase or decrease in the Design/Build Entity's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided however, that no claim for any change under Paragraph 2 above shall be allowed for any costs unless the Design/Build Entity gives written notice as herein required.
5. If the Design/Build Entity intends to assert a claim for an equitable adjustment under this clause, it must, within thirty (30) days after receipt of a written Change Order under Paragraph 1 above or the furnishing of a written notice under

Paragraph 2 above, submit to the County a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the County. The statement of claim hereunder may be included in the notice under Paragraph 2 above.

6. No claim by the Design/Build Entity for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

46 Omitted Work

A. The County may, at any time, by a written order, without notice to the Sureties, require the omission of such Contract Work as it may find necessary or desirable. An order for omission of Work shall be valid only by an executable change order. All Work so ordered must be omitted by the Design/Build Entity. The amount by which the Contract Price shall be reduced shall be determined as follows:

1. By such applicable unit prices, or rates for work of a similar nature or character as set forth in the Contract; or,
2. By the appropriate lump sum price set forth in the Contract; or,
3. By the reasonable and fair estimated cost of such omitted Work as determined by the Design/Build Entity and the Engineer, and approved by the County.

47 Changes Not to Affect Bonds

A. It is distinctly agreed and understood that any changes made in the Contract Documents for Work associated with this Project (whether such changes increase or decrease the amount thereof) or any change in the manner or time of payments or time of performance made by the County to the Design/Build Entity shall in no way annul, release or affect the liability and surety on the Bonds given by the Design/Build Entity.

B. If notice of any change is required to be given to a Surety by the provisions of any Bond, the giving of any such notice will be the Design/Build Entity's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

48 Continuing the Work

Design/Build Entity shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with County. If the Design/Build Entity and County are unable to agree, all such disputes shall be referred to ADR and litigation. No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as the Design/Build Entity and County agree in writing otherwise and County shall continue to make payments in accordance with the Contract Documents.

49 Change of Contract Time

A. The Contract Time may only be changed by a Work Authorization or Change Order. Any claim for an extension of the Contract Time shall be based on written notice delivered by the Design/Build Entity to the Engineer promptly (but in no event later than 10 days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless the Engineer allows, in writing, an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the Design/Build Entity's written statement that the adjustment claimed is the entire adjustment to which the Design/Build Entity has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by the Engineer in accordance with Article 42 if County and Design/Build Entity cannot otherwise agree. No claim for an adjustment in the Contract Time shall be valid if not submitted as previously specified above.

B. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of Design/Build Entity if a claim is made therefore as provided in this Article. Such delays shall include, but not be limited to, acts or neglect by County or others performing additional Work as contemplated by Article 41, or to fires, floods, labor disputes, epidemics, abnormal weather conditions (Article 50) or acts of God.

C. Pursuant to the Contract's float-sharing requirements, no time extensions will be granted nor delay damages considered until a delay occurs that impacts the project's critical path, consumes all available float, and extends the work beyond the Contract completion date.

50 Extension of Time on Account of Weather/Inclement Weather

A. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be submitted within five (5) days of occurrence and shall be documented by data substantiating that weather conditions where the Design/Build Entity was unable to perform work, for the period of time required for completion of the Work and could not have been reasonably anticipated and that weather conditions had an adverse effect on the scheduled construction.

B. The Design/Build Entity's construction schedule shall be based upon the inclusion of at least fifteen (15) calendar days per calendar year, of inclement weather delays to be prorated over the length of the contract. Further, the Design/Build Entity has the responsibility to take reasonable precautions to mitigate the impact of unfavorable weather conditions.

C. Failure by the Design/Build Entity to comply with the proper notice or to supply substantial data within the time limit will result in the Design/Build Entity waiving its claim for weather delay.

51 Materials, Samples and Inspections

A. Unless otherwise indicated on the Drawings or specified elsewhere, only new materials and equipment shall be incorporated in the Work. All materials and equipment furnished by the Design/Build Entity to be incorporated in the Work shall be subject to inspection by the Engineer.

No material shall be processed for, fabricated for, or delivered to the Site without prior acceptance from the Engineer.

B. If not required by the Proposal, as soon as possible after the formal execution of the Contract, the Design/Build Entity shall submit to the Engineer, the names and addresses of the manufacturers and suppliers of all materials and equipment he proposes to incorporate into the Work. When shop and supplemental drawings are required as specified below, such information shall be submitted prior to the submission of the drawings so that the Engineer may consider the manufacturer, and/or the supplier, to be acceptable or unacceptable, as to his or their ability to furnish a product meeting the Specifications, subject to final acceptance of the particular material or equipment. As requested, the Design/Build Entity shall also submit data relating to the material and equipment he proposes to incorporate into the Work, in sufficient detail to enable the Engineer to identify the particular product in question and to form an opinion as to its conformity to the Contract requirements. Such data shall be submitted in a manner similar to that specified for shop drawings.

C. Facilities and labor for the handling and inspection of all materials and equipment shall be furnished by the Design/Build Entity. Defective materials and equipment shall be removed immediately from the site of the Work. The Engineer will make arrangements for, and the County shall pay for soil density tests wherever and whenever the Engineer desires. If the results of a density test indicate that compaction is less than that specified in the Specifications, the Design/Build Entity shall reimburse the County for the full cost of the test.

D. If the Engineer so requires, either prior to beginning or during the progress of the Work, the Design/Build Entity shall submit samples of materials for such special tests as may be necessary to demonstrate that they conform to the requirements of the Contract Documents. Such samples, including concrete test cylinders, shall be furnished, taken, stored, packed, and shipped as directed, at the expense of the Design/Build Entity. The Design/Build Entity shall, at his own expense, furnish acceptable molds for making concrete test cylinders. Except as otherwise specified, the County will make arrangements for, and pay for, the tests.

E. All samples shall be packed so as to reach their destination in good condition, and shall be labeled to indicate the material represented, the name of the building or Work and location of which the material is intended, and the name of the Design/Build Entity submitting the sample. To ensure consideration of samples, the Design/Build Entity shall notify the Engineer by letter that the samples have been shipped and shall properly describe the samples in the letter. In no case shall the original letter of notification be enclosed with the samples.

F. The Design/Build Entity shall submit data and samples, or place his orders, sufficiently early to permit consideration, inspection, testing, and acceptance before the materials and equipment are needed for incorporation in the Work. Delay resulting from his failure to do so shall not be used as the basis of a claim against the County or the Engineer.

G. When required, the Design/Build Entity shall furnish to the Engineer triplicate sworn copies of manufacturer's shop or mill tests (or reports from independent testing laboratories) relative to materials and concrete data.

H. After the samples, data, etc., are considered acceptable to the Engineer, the materials and equipment used on the Work shall correspond therewith.

I. If the Work is defective, or the Design/Build Entity fails to perform the Work in such a way that the completed Work will conform with the Contract Documents, the County may order the Design/Build Entity to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the County to stop the Work, or the right of the Engineer to make this recommendation to the County, shall not give rise to any duty on the part of the County or the Engineer to exercise this right for the benefit of the Design/Build Entity or any other party.

J. If required by the Engineer, the Design/Build Entity shall promptly either correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the Engineer, remove it from the site and replace it with non-defective Work. The Design/Build Entity 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.

K. If, instead of requiring correction or removal and replacement of defective Work, County, and, prior to Engineer's recommendation of final payment, also Engineer, prefers to accept the Work, County may do so. Design/Build Entity shall bear all direct, indirect and consequential costs attributable to County's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to Engineer's recommendation of Final Payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and County shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, County may make claim therefore as provided in Article 44. If the acceptance occurs after such recommendation, an appropriate amount will be paid by the Design/Build Entity to the County.

52 Inspection of Work Away From the Site

If Work to be done away from the construction site is to be inspected on behalf of the County during its fabrication, manufacture, or testing, or before shipment, the Design/Build Entity shall give notice to the Engineer of the place and time where such fabrication, manufacture, testing or shipping is to be done. Such notice shall be in writing and delivered to the Engineer in ample time so that the necessary arrangements for the inspection can be made.

53 One Year Correction Period

A. If within one (1) year after the date of Final Acceptance or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents, any Work which is found to be defective, the Design/Build Entity shall promptly, without cost to the County, and in accordance with the County's written notification, either correct such defective Work, or, if it has been rejected by the County, remove it from the site and replace it with non-defective Work. If the Design/Build Entity does not promptly comply with such notification, or in an emergency where delay would cause serious risk

of loss or damage, the County may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect, and consequential costs of such removal and replacement including but not limited to fees and charges of engineers, architects, attorneys and other professionals will be paid by the Design/Build Entity.

B. If, instead of requiring correction or removal and replacement of defective Work, the County prefers to accept the Work, the County may do so. The Design/Build Entity shall bear all direct, indirect, and consequential costs attributable to the County's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the County shall be entitled to an appropriate decrease in the Contract Price. If the acceptance occurs after final payment, an appropriate amount will be paid by the Design/Build Entity to the County, as determined by the Engineer.

54 Application for Progress Payment

A. Unless otherwise prescribed by law, at the end of each month, the Design/Build Entity shall submit to the Engineer for review, an Application for Progress Payment filled out and signed by the Design/Build Entity covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

B. The Application for Progress Payment and SBE-M/WBE Construction Activity Report (sample is attached at the end of this section) shall identify the amount of the Design/Build Entity's Total Earnings to Date based upon value of original contract Work performed to date as approved by fully executed change orders. Retainage, in the amount of 10% will be withheld on the calculated value of any work, with the exception of stored materials which may be paid at the supplier's invoiced cost. At Design/Build Entity's request, after 50% completion of the work has been achieved, the County will implement a reduction in retainage to 5% of all future pay requests. If retainage is reduced, Design/Build Entity may not withhold more than 5% retainage from subcontractors or suppliers and will be required to certify compliance with F.S. 218.70 et seq on each subsequent pay application. Notwithstanding the foregoing, in no instance can the amount retained be less than the value of County's good faith claims plus the value of the work the County determines remains to be put in place or required to be performed as remedial activities. For the purposes of this section, 50% completion shall be that point in time when Engineer determines that half of the Work required by the Contract has been completed. In no event shall the Work be determined to be 50% completed before the County has paid 50% of the Contract amount and 50% of the Contract time has expired. The amount of previous Pay Estimate payments shall then be subtracted to equal the Balance Due during the Pay Estimate period.

C. Partial payment may be made for the delivered cost of stored materials planned for incorporation into the Work, provided such materials meet the requirements of this Contract, the Contract Drawings, and the Specifications, and are delivered and suitably stored at the project site, or at another location acceptable to the Department. Such material must be stored in a secure manner acceptable to the Department, and in accordance with the manufacturer's recommendations.

D. The delivered cost of such stored or stockpiled materials may be included in any subsequent application for payment provided the Design/Build Entity meets the following conditions:

1. An applicable purchase order or supplier's invoice is provided listing the materials in detail, the cost of each item, and identifies this specific contract by name.
2. The materials are fully insured against loss or damage (from whatever source) or disappearance prior to incorporation into the Work.
3. Stored materials approved for payment by the County shall not be removed from the designated storage area except for incorporation into the Work.
4. Evidence that the Design/Build Entity has verified quantity and quality of the materials delivered (verified packing list).

E. It is further agreed between the parties that the transfer of title and the County's payment for any stored or stockpiled materials pursuant to these General Conditions, and any applicable provisions of the Supplementary General Conditions, shall in no way relieve the Design/Build Entity of the responsibility of ensuring the correctness of those materials and for furnishing and placing such materials in accordance with the requirements of this Contract, the Contract Drawings, the Technical Specifications, and any approved changes thereto.

F. The following monthly Application for Progress Payment shall be accompanied by Bills of Sale, copies of paid invoices, releases of lien, or other documentation warranting that the Design/Build Entity has received the stored materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the stored materials and equipment are covered by appropriate property insurance and other arrangements to protect the County's interest therein, all of which shall be satisfactory to the County.

G. The Design/Build Entity shall warrant and guarantee that title to all Work, materials, and equipment covered by an Application for Progress Payment, whether incorporated in the Work or not, will pass to the County no later than the time of Final Payment free and clear of all liens or other encumbrances.

H. The Engineer shall, within ten (10) days after receipt of each Application for Progress Payment, either indicate in writing a recommendation of payment and present the Application to the County, or return the Application to the Design/Build Entity indicating in writing the Engineer's reasons for refusing to recommend payment. In the later case, the Design/Build Entity may make the necessary corrections and resubmit the Application. Twenty (20) business days after presentation of the Application for Progress Payment to the County with the Engineer's recommendation, the amount approved will (subject to the provisions of the following Paragraph) become due and when due will be paid by the County to the Design/Build Entity.

I. The County may refuse to make payment of the full amount recommended by the Engineer because claims have been made against the County on account of the Design/Build Entity's performance of the Work, or because Liens have been filed in connection with the Work, or there are other items entitling the County to a credit against the amount recommended, but the County must give the Design/Build Entity written notice within twenty (20) business days after the date on which the invoice is stamped as received (with a copy to the Engineer) which specifies the invoice deficiency and any action necessary to make the invoice complete and proper.

55 Partial Utilization

A. The County shall have the right to utilize or place into service any item of equipment or other usable portion of the Work prior to substantial completion of all of the Work. Whenever the County plans to exercise said right, the Design/Build Entity shall be notified in writing by the County, identifying the specific portion or portions of the Work to be so utilized or otherwise placed into service. If the Design/Build Entity agrees that such part of the Work is substantially complete and is capable of being partially utilized, The Design/Build Entity shall certify to the County and the Engineer that such part of the Work is substantially complete and requests the Engineer to issue a Certificate of Substantial Completion for that part of the Work. If the Engineer does not consider that part of the Work to be substantially complete, the Engineer shall notify the County and the Design/Build Entity in writing, giving the reasons therefore. If the Engineer considers that part of the Work to be substantially complete, the Engineer shall so recommend in writing to the County.

B. It shall be understood by the Design/Build Entity that until such written notification of the certification of substantial completion of that part of the Work is issued by the Engineer, all responsibility for care and maintenance of all items or portions of the Work to be partially utilized shall be borne by the Design/Build Entity. Upon issuance of said written notice of partial utilization, the County will accept responsibility for the protection and maintenance of all such items or portions of the Work described in the written notice.

C. The Design/Build Entity shall retain full responsibility for satisfactory completion of the Work, regardless of whether a portion thereof has been partially utilized by the County, and the Design/Build Entity's one (1) year correction period shall commence only after the date of Final Acceptance of the Work.

56 Substantial Completion

When the Contractor considers the entire Work ready for its intended use, the Contractor shall notify the County and the Engineer in writing that the Work is substantially complete and request that the Engineer prepare a Certificate of Substantial Completion. Within the time allowed by F.S. 218.70 and in accordance with the County, the Engineer and the Contractor shall make an inspection of the Work to determine the status of completion. If the Engineer does not consider the Work substantially complete, the Engineer shall notify the Contractor in writing giving the reasons therefore. If the Engineer considers the Work to be substantially complete, the Engineer will prepare and deliver to the County for its execution and recordation the Certificate of Substantial Completion signed by the Engineer and Contractor, which shall fix the Date of Substantial Completion. When the Engineer determines the Work to be Substantially Complete, the Department may reduce the retainage to one hundred fifty percent (150%) of the dollar value

of all Work remaining to be satisfactorily completed, provided that the Design/Build Entity is making satisfactory progress toward Final Completion of the Work, that in the opinion of both the Engineer and the Department there is no specific cause for a greater retainage, and the Design/Build Entity obtains the written consent of the Surety Companies furnishing the required Public Construction Bond on consent forms provided by the Department. All punch list work shall be completed or corrected to the satisfaction of the County within the time stated on the punch list; otherwise the Contractor does hereby waive any and all claims to all monies withheld by the County to cover the value of all such uncompleted or uncorrected items.

57 Final Application for Payment

A. After the Design/Build Entity has completed all correction Work referred to in Article 56 "Substantial Completion", and on the final punch lists, or any other punch lists which have been completed, and the Design/Build Entity has delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in these General Conditions) and other documents, all as required by the Contract Documents, and has given the Engineer written notice that the Work has been completed in conformity with the Drawings and Specifications and any approved changes thereto, the Design/Build Entity may make application for final payment following the procedure for progress payments in Article 54 "Applications for Progress Payments. The Final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, including but not limited to the following on forms provided by the County:

1. Design/Build Entity's Certification of Final Completion
2. Consent of Surety for Final Payment (Payment Bond)

The Design/Build Entity shall also submit complete and legally effective releases or waivers (satisfactory to the County) of all liens and "Notices to Owner" arising out of or filed in connection with the Work.

58 Record Documents

The Design/Build Entity shall keep one (1) record copy of all Specifications, Drawings, Addenda, modifications and shop drawings at the site in good order and clearly annotated to show all changes made during the construction process. These shall be available to the Engineer for inspection and reference and shall be delivered to him upon completion of the Project, prior to Application for Final Payment.

59 Final Payment and Acceptance

A. Upon receipt of written notice from the Design/Build Entity that the Work has been completed in conformity with the Drawings and Specifications and any approved changes thereto, and receipt of the Final Application for Payment and accompanying documentation, the County's Engineer shall promptly examine the Work and, making such tests as he may deem proper and using all of the care and judgment normally exercised in the examination of completed Work by a properly qualified and experienced Professional Engineer, shall satisfy himself that the Design/Build Entity's statement appears to be correct and the Design/Build Entity's other

obligations under the Contract Documents have been fulfilled. He shall then inform the County in writing that he has examined the Work and that it appears, to the best of his knowledge and belief, to conform to the Contract Drawings, Specifications and any approved Change Orders, that the Design/Build Entity's other obligations under the Contract Documents have been fulfilled, and that he therefore recommends acceptance of the Work for ownership and Final Payment to the Design/Build Entity. However, it is agreed by the County and the Design/Build Entity that such statement by the County's Engineer does not in any way relieve the Design/Build Entity from his responsibility to deliver a fully completed job in a good and workmanlike condition, and does not render the Engineer or the County liable for any faulty Work done or defective materials or equipment used by the Design/Build Entity.

B. The County's Engineer will then make a final estimate of the value of all Work done and will deduct there from all previous payments which have been made. The County's Engineer will report such estimate to the County together with his recommendation as to the acceptance of the Work or his findings as to any deficiencies therein. After receipt and acceptance by the County of the properly executed Final Warranty of Title and within sixty (60) days after approval of the Engineer's estimate and recommendation to the County, the County will make final payment to the Design/Build Entity of the Amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract Documents, including the following items:

1. Liquidated Damages, as applicable.

2. At the discretion of the County, two times the value of outstanding items of correction Work or "punch list" items indicated on the Certificate of Substantial Completion, "final punch list", or any other "punch list" as being yet uncompleted or uncorrected, as applicable. All such Work shall be completed or corrected to the satisfaction of the County within the time stated on the Certificate of Substantial Completion, or on the "final punch list", or any other "punch list", otherwise the Design/Build Entity does hereby waive any and all claims to all monies withheld by the County to cover the value of all such uncompleted or uncorrected items.

C. All prior estimates are subject to correction in the final estimate.

60 Design/Build Entity's Continuing Obligation

The Design/Build Entity's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any Progress or Final Payment by the Engineer, nor the issuance of a Certificate of Substantial completion nor any payment by the County to the Design/Build Entity under the Contract Documents, for any use or occupancy of the Work or any part thereof by the County, nor any act of acceptance by the County, nor any failure to do so, nor any review of a Shop Drawing or sample submittals, will constitute an acceptance of Work not in conformance with the Contract Documents or a release of the Design/Build Entity's obligation to perform the Work in accordance with the Contract Documents.

61 Final Payment Terminates Liability of County

Final Payment is defined as the last Progress Payment made to the Design/Build Entity for earned funds, less retainage as applicable, less deductions listed in Article 59 "Final Payment and Acceptance". The acceptance of the Final Payment referred to in Article 59, shall be a full release of the County and its agents from any and all claims of liability to the Design/Build Entity for anything done or furnished for, or relating to, the Work or for any act or neglect of the County, or of any person relating to or affecting the Work, except demands against the County for the remainder, if any, of the amounts kept or retained under the provisions of Article 59.

62 Not Used

63 Not Used

64 Not Used

65 Title to Materials Found on the Work

A. The County reserves the right to retain title to all suitable soils, stone, sand, gravel, and other materials (as determined suitable by the Engineer) developed and obtained from excavations and other operations connected with the Work. Unless otherwise specified in the Contract Documents, neither the Design/Build Entity nor any subDesign/Build Entity shall have any right, title, or interest in or to any such materials.

B. The Design/Build Entity will be permitted to use any such suitable materials in the Work, without charge, provided that such materials meet the requirements of the Contract Documents.

66 Not Used

67 Asbestos

If the Design/Build Entity during the course of the Work observes, uncovers or otherwise becomes aware of the existence of any asbestos, hazardous waste, or toxic or radioactive material at the site which has not been rendered harmless to which the Design/Build Entity or any subDesign/Build Entity, supplier or other person may be exposed, the Design/Build Entity shall immediately stop Work in the affected area and notify the County and the Engineer and thereafter confirm any oral notice in writing. In addition, the Design/Build Entity shall take reasonable precautions to prevent or contain the movement, spread or disturbance of such materials and to protect persons and property. The County shall promptly consult with the Engineer concerning such condition and determine the necessity of County's retaining special consultants or qualified experts to deal therewith. The Design/Build Entity shall not perform any Work in connection therewith prior to receipt of special written instructions from the County through the Engineer.

A. PROCEDURES FOR DEMOLITION OF STRUCTURES:

1. Notification:

Federal and state asbestos regulations require, prior to demolition of any structure:

- (a) An inspection for asbestos-containing materials (ACM);
- (b) Removal of specific ACM; and,
- (c) An asbestos notification of demolition received at least ten (10) business days prior to demolition.

To meet requirements (a) and (b) above, the County has surveyed the structure(s) in this Contract for the presence of ACM and every effort has been made to remove Regulated Asbestos-Containing Material (RACM) and Category II Non-Friable ACM (e.g. asbestos-cement board and shingles) before releasing this project to the Design/Build Entity. Verification of this Work is attached to this Contract. If not attached, it is the Design/Build Entity's responsibility to contact the Project Manager of the County Department overseeing this Contract, or the County's Risk Management/Loss Control section to obtain:

- (a) A copy of the pre-demolition asbestos inspection report; and,
- (b) A copy of Risk Management/Loss Control's memo of approval to proceed to the next phase of the project addressed to the County department overseeing this project.

To meet requirement (c) above, the Design/Build Entity is responsible for submitting a complete and accurate asbestos notification of demolition form titled "Notice of Asbestos Removal Project" [i.e., NESHAP notification, 40 CFR Part 61.145(b)], for each separate address to be demolished to the below listed agencies at least ten (10) business days prior to demolition. The 4-copy forms are available from the Department of Environmental Protection (FDEP) and Palm Beach County Risk Management/Loss Control.

SEND ORIGINAL TO:
 State Asbestos Coordinator
 FDEP
 2600 Blair Stone Road
 Tallahassee, FL 32399-5420

SEND YELLOW COPY TO:
 Environmental Specialist
 FDEP
 P.O. Box 15425
 West Palm Beach, FL 33416-5425

SEND PINK COPY OR FAX OF ORIGINAL TO:
 P.B.C. Risk Management/Loss Control
 Attn.: NESHAP
 P.O. Box 21229
 West Palm Beach, FL 33416-1229
 Fax: (561) 233-5420

The Design/Build Entity must notify Loss Control (561-233-5430) immediately if the demolition start date changes. No demolition may begin before the start date on the NESHAP notification and no demolition may occur without a notice to proceed from the County department. It is the responsibility of the Design/Build Entity to call and submit revised NESHAP notifications to the above listed agencies, adhering to required NESHAP time frames.

The Design/Build Entity is responsible for physically checking the structure(s) before submitting the NESHAP notification to ensure that all RACM and Category II ACM, as identified in the pre-demolition asbestos inspection report, have been removed. If RACM or Category II ACM is discovered, immediately contact the County's Project Manager or Loss Control.

2. Work Practices:

The Design/Build Entity will utilize wet methods to control airborne emissions during the demolition process and during loading onto transport vehicles, regardless whether Category I is present or not. The Design/Build Entity is responsible for supplying water meters, hoses, and adequate volume of water to the demolition site.

Recycling of substructure with either presumed or confirmed asbestos-containing Category I (e.g. floor tile, sheet vinyl, and/or roofing materials) is not permitted, unless written authorization is provided to the Design/Build Entity by Palm Beach County.

3. OSHA and Florida Statutes Compliance:

In accordance with OSHA (ref. 29 CFR 1926.1101) the Design/Build Entity must have a competent person on-site who:

- (a) Is capable of identifying existing asbestos hazards in the work place;
- (b) Is capable of selecting the appropriate control strategy for asbestos exposure;
- (c) Has the authority to take prompt corrective action to eliminate them.

This person must be trained in accordance with Chapter 469 Florida Statutes as an on-site supervisor.

Copies of training certificates of the on-site supervisor shall be made available to the County upon request.

B. REMOVAL OF CONFIRMED OR PRESUMED ASBESTOS-CONTAINING BITUMINOUS ROOFING MATERIALS:

The County will provide all known information as to the roofing material used on the existing roof specified in the Contract Documents. This information will include all existing specifications, drawings, and the results of any recent bulk sampling analysis of the existing roof system determining the presence or absence of asbestos by percentage and the location where each sample was taken. In the absence of bulk sampling for asbestos, the roofing materials will be presumed asbestos containing until proven otherwise.

It is the Design/Build Entity's responsibility to determine if the information furnished is adequate to provide a bid.

It is the responsibility of the Design/Build Entity awarded the Contract to determine if the roofing materials do not contain asbestos. If the Design/Build Entity wishes not to sample and analyze for asbestos, the materials will be presumed to contain asbestos and must be handled accordingly. If the Design/Build Entity elects to sample the roof system it must first notify the County of the sampling, including date, location, and number of samples to be collected. The bulk sample analyses must be performed by an NVLAP-accredited laboratory (NVLAP is the National Voluntary Laboratory Accreditation Program). Results, if proven less than one percent (1.0%) asbestos, shall be provided to the County prior to the start of any Work.

The Design/Build Entity awarded the Contract will be required to meet all Federal, State, and local regulations pertaining to the handling, removal, and disposal of confirmed or presumed asbestos-containing roofing materials. This includes, but is not limited to:

1. Meeting the requirements listed in Chapter 469.012 (2) and (3) Florida Statutes regarding training of on-site roofing supervisors involved in the removal of asbestos containing bituminous resinous roofing materials; and,
2. Utilizing removal methods that will maintain the roofing material's Category I non-friable status and will not create dust (i.e., employ methods other than sanding, grinding, drilling, abrading, rotary blade, or saw cutting). Suggested methods are slicing, shearing, or punch cutting while using wet methods where feasible.

The Design/Build Entity will submit upon award of the Contract the following documentation to the County department coordinating this project:

1. Copies of training certificates of the on-site roofing supervisor in compliance with the current requirements of Chapter 469 Florida Statutes;
2. Resume of the on-site roofing supervisor documenting asbestos-containing roofing removal jobs performed within the last two (2) years;
3. Approval of a landfill to accept confirmed or presumed asbestos containing roofing material and any conditions associated with its acceptance; and,
4. A plan of action, as specified by OSHA 29 CFR 1926.1101, which addresses:
 - a. Method(s) of removal;
 - b. Worker protection;
 - c. Protection of building occupants and ventilation system;
 - d. Method and location of disposal.

C. HANDLING AND DISPOSAL OF ASBESTOS CEMENT PIPE:

1. General:

Federal regulations (40 CFR Part 61, Sub-part M) classify asbestos-cement pipe (AC pipe) as Category II non-friable asbestos-containing material. AC pipe must be handled in a manner which

will maintain this classification. Therefore, all cutting and disposal of AC pipe must be performed by a Florida licensed Asbestos Design/Build Entity.

The County will make every effort to identify and quantify the location of known AC pipe and material prior to onset of the Work.

If during the course of the Work the Design/Build Entity observes, uncovers, or otherwise becomes aware of the existence of any AC pipe, pieces, or material at the site to which the Design/Build Entity or any subDesign/Build Entity, supplier, or other person may be exposed, the Design/Build Entity shall immediately notify the County and confirm any verbal notice in writing. The County shall promptly consult with the Project Engineer concerning such conditions and determine the necessity of the County retaining special consultants or qualified experts. The Design/Build Entity shall not perform any Work near or in connection with the suspect material until receipt of special written instructions from the County.

The Design/Build Entity will ensure that all subDesign/Build Entities follow these procedures.

2. Pre-Work Submittals:

The Design/Build Entity shall submit the name of the Asbestos Design/Build Entity and a copy of their Florida Asbestos Design/Build Entity license to the Palm Beach County department coordinating this project, prior to start of the Work.

3. Worker Protection:

Licensed asbestos Design/Build Entities will comply with the requirements of OSHA 29 CFR 1926.1101 concerning worker protection.

4. Execution of Work:

AC pipe will be kept wet during all phases of removal. No visible emissions are permitted. Wet the pipe using and airless sprayer or utilize available water.

Apply drop cloth of 6-mil polyethylene to the area beneath and a minimum of three feet (3') beyond the section of pipe to be cut.

Break, cut or snap pipe into sections suitable in size to the disposal facility. Abrasive disc saws are prohibited.

Apply lockdown encapsulant to exposed edges of pipe. Pick up all pipe debris that may have fallen outside the drop cloth.

Use of compressed air to clean AC pipes is prohibited.

At no time should AC pipe or pieces be mixed in with fill material.

5. Disposal:

Wrap pipe in existing drop cloth. Transfer pipe to a clean drop cloth outside the trench, and wrap and secure in a second layer of 6-mil polyethylene.

Affix the following labels to the exterior of each separately wrapped section of pipe. Labels are to be waterproof, legible, and large enough in size to be readily visible:

- | | |
|---------------|--|
| First Label: | CAUTION
Contains Asbestos Fibers
Avoid Opening or Breaking Container
Breathing Asbestos is Hazardous to Your Health |
| Second Label: | DANGER
Contains Asbestos Fibers
Avoid Breathing Dust
Cancer and Lung Disease Hazard
Breathing Airborne Asbestos, Tremolite,
Anthophyllite or Actinolite Fibers
is Hazardous to Your Health |
| Third Label: | RQ HAZARDOUS SUBSTANCE
Solid, NOS
ORM-E, NA9188
(Asbestos) |
| Fourth Label: | Label each container with the name of the
generator (owner) and the location at which
the waste was generated. |

Properly dispose of all AC pipe generated each day. All wrapped sections may be stored in a secure, locked enclosure pending disposal, if authorized by the County. At no time are sections or pieces of AC pipe to be left on the project site unwrapped and unsecured at the end of the day.

All vehicles and/or containers used to haul asbestos containing waste material shall be lined with a minimum of 6-mil polyethylene layer.

Label trucks used to transport asbestos-containing waste material during loading and unloading as follows (refer to 29 CFR 1910.145 (d) (4) for sign format):

DANGER Asbestos Dust Hazard
Cancer and Lung Disease Hazard
Authorized Personnel Only

6. Post Work Submittals

The Design/Build Entity, or Asbestos Design/Build Entity, as waste generator shall complete a Waste Shipment Record (WSR) for each shipment of asbestos-cement pipe disposed. Refer to 40 CFR Part 61, Revision Final Rule for an example of WSR or contact Palm Beach County Risk Management/Loss Control.

The Design/Build Entity or its designated subDesign/Build Entity will submit the following documents to the Palm Beach County department coordinating this project prior to payment:

- (a) A copy of the WSR prior to shipment; and,
- (b) A copy of the WSR signed by the disposal facility within 35 days of shipment.

7. Regulations:

Environmental Protection Agency: 40 CFR Part 61 National Emission Standards for Hazardous Pollutants; Asbestos NESHAP Revision Final Rule, November 20, 1990.

Occupational Safety and Health Administration: 29 CFR 1926.1100 - Asbestos, Construction Industry Standard.

Department of Business and Professional Regulation, Chapter 469 Florida Statutes, Licensure of Consultants and Design/Build Entities.

68 EXPLOSIVES AND HAZARDOUS MATERIALS

A. Design/Build Entity shall obtain all required Federal, State and local permits and licenses and shall be responsible for the safe and proper handling, transporting, storage and use of any explosive or hazardous materials brought onto or encountered within the site, and at its expense, make good any damage caused by its handling, transporting, storage and use. The Design/Build Entity will notify the County immediately if explosive or hazardous materials are encountered on the site. Transporting explosive or hazardous materials onto the site will require prior written approval from the County. The Design/Build Entity shall maintain and Post as necessary Material Hazard Data Sheets for all applicable Hazardous Materials used in the course of his work.

B. In the event that hazardous material is improperly handled or stored by the Design/Build Entity, its subDesign/Build Entities, any sub-sub Design/Build Entities, or any employee or agent of any of the aforementioned which results in contamination of the site, Design/Build Entity shall immediately notify the County and the appropriate governmental authority and shall take whatever action is necessary or desirable to remediate the contamination at the Design/Build Entity's sole cost and expense. Further, Design/Build Entity shall indemnify and hold harmless from any and all cost, expense, action, or liability whatsoever resulting from such contamination and/or remedial activities.

69 Not Used

70 Listing of the Duties, Responsibilities and Limitations of Authority of the Resident Project Representative

A. The Engineer may furnish a Resident Project Representative (RPR), assistants and other field staff to assist the Engineer in observing performance of the Work of the Design/Build Entity. The RPR may only be part time on site, and the Design/Build Entity shall coordinate with the RPR as required in the Contract Documents.

B. Through on-site observations of the Work in progress and field checks of materials and equipment by the RPR and assistants, the Engineer shall provide further protection for the County against defects and deficiencies in the Work; but, the furnishing of such services will not make the Engineer responsible for or give the Engineer control over construction means, methods, techniques, sequences or procedures or for the safety precautions or programs, or responsibility for the Design/Build Entity's failure to perform the Work in accordance with the Contract Documents.

C. The duties and responsibilities of the RPR are limited to those of the Engineer in the Engineer's Contract with the County and in the construction Contract Documents, and are further limited and described as follows:

1. GENERAL:

The RPR is the Engineer's agent at the site, will act as directed by and under the supervision of the Engineer, and will confer with the Engineer regarding the RPR's actions. The RPR's dealings in matters pertaining to the on-site Work shall in general be with the Engineer and the Design/Build Entity, keeping the County advised as necessary. RPR's dealings with subDesign/Build Entities shall only be through or with the full knowledge and approval of the Design/Build Entity. RPR shall generally communicate with the County with the knowledge of and under the direction of the Engineer.

2. DUTIES AND RESPONSIBILITIES OF THE RPR:

a. Review the construction progress schedule, schedule of shop drawing submittals, and schedule of values prepared by the Design/Build Entity and consult with the Engineer concerning their acceptability.

b. Attend various meetings with the Design/Build Entity, including pre-construction conferences, construction progress meetings, job site conferences and other project-related meetings, and prepare and circulate written copies of minutes thereof.

c. Serve as the Engineer's liaison with the Design/Build Entity, working principally through the Design/Build Entity's superintendent or Design/Build Entity, and assist in understanding the intent of the Contract Documents; and assist the Engineer in serving as the County's liaison with the Design/Build Entity when the Design/Build Entity's operations affect the County's on-site operations.

d. Assist in obtaining from the County additional details or information, when required for proper execution of the Work.

e. Record the dates of receipt of shop drawings and samples.

f. Receive samples furnished at the site by the Design/Build Entity, and notify the Engineer of availability of samples for examination.

- g. Advise the Engineer and the Design/Build Entity of the commencement of any Work requiring a shop drawing or sample if the submittal has not been approved by the Engineer.
- h. Conduct on-site observations of the Work in progress to assist the Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
- i. Report to the Engineer whenever the RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise the Engineer of Work that the RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- j. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel and that the Design/Build Entity maintains adequate records thereof; and observe, record and report to the Engineer appropriate details relative to the test procedures and start-ups.
- k. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the Engineer.
- l. Report to the Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to the Design/Build Entity clarifications and/or interpretations as issued by the Engineer.
- m. Consider and evaluate the Design/Build Entity's suggestions for modifications in Drawings or Specifications and report with the RPR's recommendations to the Engineer. Transmit to the Design/Build Entity decisions as issued by the Engineer.
- n. Maintain at the job site and the Engineer's office files for correspondence, reports of job conferences, shop drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, Written Amendments, additional drawings issued subsequent to the execution of the Contract, the Engineer's clarifications and interpretations of the Contract Documents, progress reports, and other Project-related documents.
- o. Record names, addresses and telephone numbers of all subDesign/Build Entities and major suppliers of materials, equipment and manufactured articles.
- p. Furnish the Engineer periodic reports as required of progress of the Work and of the Design/Build Entity's compliance with the progress schedule and schedule of shop drawing and sample submittals.
- q. Consult with the Engineer in advance of scheduled major tests, inspections or start of important phases of the Work.

- r. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from the Design/Build Entity and recommend to the Engineer Change Orders, Work Directive Changes, and Field Orders.
- s. Report immediately to the Engineer and the County upon the occurrence of any accident witnessed by the RPR or that was otherwise made known to the RPR.
- t. Review applications for payment with the Design/Build Entity for compliance with the established procedure for their submission and forward with recommendations to the Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.
- u. During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by the Design/Build Entity are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to the Engineer for review and forwarding to the County prior to final payment for the Work.
- v. Before the Engineer issues a Certificate of Substantial Completion, submit to the Design/Build Entity a list of observed items requiring completion or correction.
- w. Conduct final inspections in the company of the Engineer, the County and the Design/Build Entity and prepare a final list of items to be completed or corrected.
- x. Observe that all items on the final list have been completed or corrected and make recommendations to the Engineer concerning acceptance.

D. LIMITATIONS OF AUTHORITY:

- 1. The Resident Project Representative shall not:
 - a. Authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized in writing by the Engineer.
 - b. Exceed limitations of the Engineer's authority as set forth in the Contract Documents.
 - c. Undertake any of the responsibilities of the Design/Build Entity, subDesign/Build Entities or the Design/Build Entities superintendent or Design/Build Entity.
 - d. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
 - e. Advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.

- f. Accept shop drawings or sample submittals from anyone other than the Design/Build Entity.
- g. Authorize the County to occupy the Project in whole or in part.
- h. Participate in specialized field or laboratory tests or inspections conducted by others as specifically authorized by the Engineer.

71 Resolution of Claims and Disputes

A. ADR Procedures:

1. The Design/Build Entity and County agree to submit all claims not resolved by mutual agreement using the ADR Procedures listed below, which will be followed by the parties to resolve all disputes, if possible, prior to either the County or Design/Build Entity submitting the claim to litigation.

2. ADR Procedures available to the parties include:

- a. Facilitated Negotiation; and,
- b. Non-Binding Arbitration.

B. If a Claim is resolved by an ADR Procedure, the Engineer will prepare or obtain appropriate documentation.

C. Facilitated Negotiations:

1. If a Claim has not been resolved by mutual agreement, the dispute shall be promptly submitted to the individual designated as the Facilitator for this Project.

- a. The Facilitator shall be designated by the Design/Build Entity and County at the time of the execution of the Contract. In the event that the parties are unable to agree as to the designation of the Facilitator, the Facilitator shall be designated by the American Arbitration Association, who shall appoint an impartial individual who is skilled at negotiating.
- b. The Engineer shall, at the time of referral to the Facilitator, provide a description of the issues or concerns which relate to the claim to the Facilitator, County and Design/Build Entity. Any party may within three (3) days of receipt of the description by the Facilitator forward to the Facilitator and other parties a written notice as to any other issues and concerns which they believe relate to the claim. Unless otherwise agreed, there shall be no ex parte communications with the Facilitator.
- c. The Facilitator shall also promptly determine if all parties are in possession of adequate information necessary to evaluate said issues and concerns. In the event that they are not, the Facilitator shall utilize his best efforts to obtain the required information in a prompt manner.
- d. The Facilitator shall immediately prepare an agenda consisting of the various issues and concerns which shall be delivered to the County, Design/Build Entity and Engineer and schedule a conference among all parties.

- e. The conferences will be attended by the persons most familiar with the issues set forth in the Agenda prepared by the Facilitator as well as a representative of each party who is authorized to act on behalf of such party as to reaching agreement as to such issues. The Engineer shall also be present if requested by either of the parties or the Facilitator during all or part of such conferences.
- f. The Facilitator shall not offer opinions as to the issues and concerns under discussion, but shall lead the negotiations in an impartial manner.
- g. The Facilitator shall endeavor to develop consensus and agreement as to each issue and concern. Agreements as to such issues, if reached, shall be acknowledged by the parties upon preparation of a written summary by the Facilitator.
- h. Upon determination by the Facilitator that such negotiations are unlikely to achieve further meaningful results, the Claim shall be subject to further ADR Procedures in accordance with this Contract.
- i. The costs of the Facilitator shall be borne equally by the County and Design/Build Entity.
- j. These proceedings and the documents prepared exclusively for use in these proceedings shall be deemed to be matters pertaining to settlement negotiations and not subsequently admissible at any further proceeding except for such summaries of agreements prepared by the Facilitator and acknowledged by the parties.

D. Non-Binding Arbitration:

1. Controversies and Claims Subject to Non-Binding Arbitration:

- a. Any controversy or Claim arising out of or related to the Contract, or the breach thereof (except controversies or Claims relating to the aesthetic effect and except those waived by final payment as provided in the General Conditions) shall be referred to non-binding arbitration, which shall be conducted in accordance with this Paragraph 4.D.1, if the Claim remains unresolved following ADR Procedures under Paragraph 3.C.4.
- b. Such controversies or Claims shall be subject to non-binding arbitration upon written demand of either party.
- c. Non-binding arbitration shall be a condition precedent to the litigation of disputes and claims.

2. Rules and Notices for Non-Binding Arbitration:

- a. Claims subject to ADR shall be referred to non-binding, arbitration in accordance with American Arbitration Association Construction Industry, except as modified herein.
- b. Notice of demand for non-binding arbitration shall be filed in writing with the other party to the Contract between the County and Design/Build Entity and a copy shall be filed with the Engineer.

3. Contract Performance During Non-Binding Arbitration:
 - a. During non-binding arbitration proceedings, the County and Design/Build Entity shall comply with the provisions of the General Conditions.
4. When Non-Binding Arbitration May Be Demanded:
 - a. Demand for non-binding arbitration may not be made until:
 - i. Written notice of a claim has been given in accordance with the terms of this Contract; and,
 - ii. The parties have attempted to resolve the claim through Facilitated Negotiation.
 - b. In no event shall a demand for non-binding arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.
5. Consolidation/Common Arbitrators:
 - a. To the extent not prohibited by the County's or Design/Build Entity's agreements with third parties, disputes or Claims with third parties involving common questions of fact or law shall be heard by the same arbitrators in consolidated, non-binding arbitration proceedings.
6. Document Production, Depositions, and Exchange of Non-Binding Arbitration Exhibits:
 - a. After a demand for non-binding arbitration, each party shall have the right to immediate production of Project-related documents requested in writing from the other party for inspection and copying, except for those documents which are covered by an unwaived attorney/client privilege or which were prepared in anticipation of arbitration or litigation.
 - b. Following production, each party to the dispute shall be entitled to take three (3) depositions which in combination shall not exceed three (3) days in length for direct examination.
 - c. No later than ten (10) days prior to the hearing, the parties shall make available to each other, for inspection and copying, the exhibits, photographs, and other documents which they intend to introduce or refer to during the non-binding arbitration.
7. Award Resulting from Non-binding Arbitration:
 - a. The award resulting from the non-binding arbitration shall be advisory only. It shall contain specific, detailed findings of fact and conclusions explaining the rationale for the award.
 - b. Within thirty (30) days from the date of the award, the County and Design/Build Entity shall each serve written notice to the other, with a copy to

the Engineer, indicating either acceptance or rejection of the award. Failure to specifically accept the award shall be deemed as rejection. If both accept the award, then the dispute or Claim shall be deemed to have been resolved and the Engineer will prepare or obtain appropriate documentation to implement the award. If either the County or Design/Build Entity, or both, reject the award, the dispute or Claim shall be considered unresolved and subject to litigation in the appropriate jurisdiction.

c. The award shall not be admissible as evidence in subsequent litigation, but shall be considered for recovery of attorney's fees and costs as provided in Paragraph 4.D.8. For purposes of compliance with the applicable statute of limitations, the running of the statute shall be suspended as of the date of demand for non-binding arbitration, provided that litigation is commenced within sixty (60) days from the date of the arbitration award.

8. Attorneys Fees, Arbitration Costs, and Court Costs:

a. Attorneys fees, arbitration costs, and litigation costs shall be awarded to:

i. The party who accepts a non-binding arbitration award and subsequently prevails in litigation necessitated by the other party's rejection of the award; and,

ii. The prevailing party in any litigation necessary to obtain:

(a) Enforcement of ADR Procedures; or,

(b) Collection of a final, non-appealable judgment obtained subsequent to exhaustion of ADR Procedures.

72 Design/Build Entity Furnished Drawings, Data and Samples

A. Review and permission to proceed by County as stated in this Contract does not constitute acceptance or approval of design details, calculations, analyses, test methods, certificates or materials developed or selected by the Design/Build Entity and does not relieve Design/Build Entity from full compliance with contractual obligations. Drawings, samples, catalogues, data and certificates required to be submitted to the County for review, shall be submitted attached to forms provided by County.

B. All correspondence from the Design/Build Entity to the County shall be numbered sequentially and the submittal number shall be referenced. Submittal drawings (shop, erection or setting diagrams) and schedules, required for work of various trades, shall be checked before submission by technically qualified employees of Design/Build Entity for accuracy, completeness and compliance with contract requirements. These drawings and schedules shall be stamped and signed by Design/Build Entity certifying to such check. The certification stamp shall read as follows:

"I certify that I have checked this submittal for accuracy, completeness and compliance with contract requirements, and it has been coordinated with all other submittals and Contract Documents."

Signed _____

Date _____

(Company Name)

C. Drawings

1. Where drawings are required for (a) fabrication of Design/Build Entity furnished equipment; (b) installing Design/Build Entity furnished material or equipment; or (c) planning and performance of the work under Contract; such drawings shall be submitted by and at the expense of the Design/Build Entity before fabrication, installation or performance is commenced. Each submittal shall be made not less than thirty five (35) calendar days prior to the time that the drawings are required in accordance with the schedule. Allow at least 21 calendar days for review by County. County's review will be accomplished based on the Design/Build Entity's submittal schedule portion of the CPM schedule, as approved. Such drawings shall include, but not be limited to, match marks, erection diagrams and other details, such as field connections for proper installation, erection of the equipment, and performance of the work.

2. For drawings greater in size than 11" x 17", one reproducible and four copies shall be submitted to the County by and at the expense of the Design/Build Entity. The County will be the sole judge of the adequacy of the quality of the reproducible and prints and may reject reproducibles and/or prints on the basis of quality alone. Such drawings will not be folded, but will be transmitted in mailer rolls manufactured expressly for that purpose. The reproducible with the County's review comments will be returned to the Design/Build Entity. A reproducible copy of drawings equal to or less than 11" x 17" is not necessary, but five copies of the unfolded drawings must be transmitted to the County.

3. If drawings show variations from the contract requirements, the Design/Build Entity shall describe such variations in writing, separate from the drawings, at the time of submission. If the County approves any such variation(s), it shall issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

4. Drawings of a specific piece of equipment shall identify components with the manufacturer's part number or reference drawing clearly indicated. If reference drawing numbers are used, the review date of such drawings shall be included. Drawings shall indicate design dimensions, maximum and minimum allowable operating tolerances on all major wear fits, i.e. rotating, reciprocating or intermittent sliding fits between shafts or stems and seals, guides and pivot pins. The sequence of submission of all drawings shall be such that all information is available for reviewing each drawing when it is received.

5. All drawings submitted by the Design/Build Entity shall be certified and dated by the Design/Build Entity on the face of each drawing to be correct, accurate and shall be furnished in accordance with requirements of the specifications. County will conduct a review of Design/Build Entity's drawings and a drawing marked with one of the following review comments will be returned to the Design/Build Entity.

a. No exceptions taken.

- b. Comments attached. Resubmit.
- c. Rejected.

The Design/Build Entity must incorporate the changes indicated, resubmit and obtain a Code (a.) or (b.) notation before release for shipment can be granted.

D. Samples

1. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the work will be judged. Samples of all items of related systems (i.e. adjacent surfaces requiring similar colors but manufactured of different materials) must be submitted in the same time frame before the approval process can begin.
2. Where samples are required, they shall be submitted by and at the expense of the Design/Build Entity. Such submittal shall be made not less than thirty five (35) calendar days prior to the time that the materials represented by such samples need to be ordered for incorporation into any work in accordance with the schedule. Allow at least 21 calendar days for County's review. Materials represented by such samples shall not be manufactured, delivered to the site or incorporated into any work without such review. Each sample shall bear a label showing the Design/Build Entity's name, date submitted, project name, name of the item, manufacturer's name, brand name, model number, supplier's name, and reference to the appropriate drawing, technical specification section and paragraph number, all as applicable.
3. Samples which have been reviewed may, at County's option, be returned to the Design/Build Entity for incorporation into the work.

E. Catalogues, Data and Certificates

1. Where catalogues, data or certificates are required, five (5) copies of each shall be submitted by and at the expense of the Design/Build Entity. Such submittal shall be made not less than thirty five (35) calendar days prior to the time that the materials represented by such catalogues, data or certificates must be ordered for incorporation into any work in accordance with the CPM schedule. Allow at least 21 calendar days for County's review. Material represented by such shall not be fabricated, delivered to the site or incorporated into any work without such review.
2. Certificates shall clearly identify the material being certified and shall include but not be limited to providing the following information: Design/Build Entity's name, project name, name of the item, manufacturer's name, and reference to the appropriate drawing, technical specification section and paragraph number all as applicable. All catalogues, data and certificates submitted by the Design/Build Entity shall be certified and dated by the Design/Build Entity on the face of each catalogue, data and certificate to be correct and shall be furnished in accordance with these requirements and the requirements of the Technical Specification, on forms provided by the County. County will conduct a review of Design/Build Entity's catalogues, data, and certificates and one copy marked with the review comments listed in paragraph A, above, will be returned to the Design/Build Entity.

73 Design/Build Entity Work-Site Emergency Action Plan

Design/Build Entity shall be fully and solely responsible for the safety of all on-site contract personnel, including subDesign/Build Entities. The Design/Build Entity shall supply the Water Utilities Communication Department with names, telephone numbers and/or pager numbers of designated contract/subcontract personnel responsible for implementing Design/Build Entity emergency action plans.

74 Cost Savings

After award of the Contract, and the issuance of lump sum Work Authorizations, the County will consider changes to the Contract proposed by the Design/Build Entity impacting the intent of the Contract Documents. If the Design/Build Entity awarded the project proposes changes to the Contract Documents which reduce project costs, and they are accepted by the County and the Engineer, then the Design/Build Entity will be entitled to fifty percent (50%) of the savings resulting from the changes (after engineering fees have been paid).

75 Safety and Health Regulations

A. The Design/Build Entity shall be fully and solely responsible for conducting all operations under this Contract at all times in such a manner as to avoid the risk of bodily harm to persons and damage to property. The Design/Build Entity shall continually and diligently inspect all work, materials, and equipment to discover any conditions that might involve such risks and shall be solely responsible for discovery and correction of any such conditions.

B. The Design/Build Entity shall comply with the Department of Labor Safety and Health Regulations promulgated under the Occupational Safety and Health Act of 1970 to include General Industry Standards (29 CFE 1910) and (29 CFR 1926/1910) for construction, and under Section 107 of the Contract Work Hours and Safety Standards Act.

C. The Design/Build Entity shall comply with the Manual on Uniform Traffic Control Devices when working on or off the site.

D. The Design/Build Entity shall allow representatives of the Department of Labor and authorized representatives of the Palm Beach County Water Utilities Department and the Palm Beach County Risk Management Department full access to the project for inspection.

76 Best Management Practices for the Construction Industry

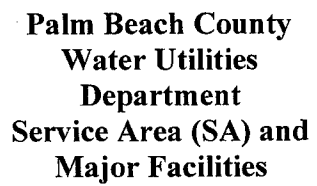
A. The Design/Build Entity shall be responsible for assuring that each Design/Build Entity or subDesign/Build Entity evaluates the site before construction is initiated to determine if any site conditions may pose particular problems for the use, handling, production or storage of any regulated substances. For instance, handling regulated substances in the proximity of water bodies or wetlands may be improper.

B. If any regulated substances are stored on the construction site during the construction process, they shall be stored in a location and manner which will minimize any possible risk of release to

the environment. Any storage container of 55 gallons or 440 pounds or more containing regulated substances shall have constructed below it an impervious containment system constructed of material of sufficient thickness, density and composition that will prevent the discharge to the land, groundwater or surface water of any pollutant which may emanate from said storage container. Each containment system shall be able to contain 150% of the contents of all storage containers above or within the containment system.

C. Each Design/Build Entity shall familiarize itself with the manufacturer's safety data sheet supplied with each material containing a regulated substance and shall be thoroughly familiar with procedures required to contain and clean up any releases of the regulated substance. Any tools or equipment necessary to accomplish same shall be available in case of release.

D. Upon completion of construction, all unused and waste regulated substances and containment systems shall be removed from the construction site by the Design/Build Entity and shall be disposed of in a proper manner as prescribed by law.



Attachment 2

P.B.C.W.U.D. SA

----- Mandatory Reclaimed SA

- - - Palm Beach County Limits

★ Administration

■ Water Reclamation Facility

▲ Water Treatment Facility

Wetlands

