

THE STATE OF TEXAS §
 §
COUNTY OF WEBB §

AGREEMENT

This is an AGREEMENT made by and between Webb County, a political subdivision of the State of Texas (hereinafter referred to as "County"), 1000 Houston Street, Laredo, Texas 78040, and Midas Contractors, LLC, a Texas Limited Liability Company, (hereinafter referred to as "Contractor"), a construction contractor, 203 Valladolid Avenue, Laredo, Webb County, Texas 78046.

Recitals

Whereas, Webb County seeks to enter into a Renovation Project regarding the Justice of the Peace, Precinct 1, Place 2 Courtroom entailing the removal and replacement of courtroom carpet, refurbishing all courtroom pews and jury chairs, the reconstruction of the customer service window, modifying the work area to create an open space concept and refurbishing customer lobby benches. (the "Project"), all located at the Webb County Justice Center Building, 1110 Victoria Street, Suite 103, Laredo, Webb County, Texas; and,

Whereas, Contractor represents that it is qualified and capable of providing the materials/supplies and performing the services called for in this agreement and is willing to perform these services; and

Whereas, Webb County desires that Contractor provide the materials and the services as set forth herein;

Now, Therefore, Webb County and Contractor, in consideration of their mutual promises and benefits, do mutually agree as follows:

Section 1. Scope of Services.

Contractor agrees to furnish all supervision, labor, materials, supplies, equipment, and subcontracting necessary and required for the renovation project for the Webb County Justice of the Peace Precinct 1, Place 2. The materials, services, and Pricing for the Project under which they are to be provided are more particularly described in Exhibit A, "General Contract Requirements, Scope of Services, and Pricing" attached hereto and incorporated hereinabove reference as if set forth in full for all intents and purposes. Further, this Agreement is subject to the provisions set out in Invitation to Bid (ITB) 2024-005 "Justice of the Peace Precinct 1, Place 2-Renovation Project" and Response to said proposal submitted by Contractor including a breakdown of pricing for work on Project are shown in Exhibit "B" and which are incorporated by reference as part of this Agreement as set forth in full for all intents and purposes.

Section 2. Compensation.

For and in consideration of the material's provided and services rendered by Contractor under

this Agreement, the County shall pay Contractor **SIXTY-NINE THOUSAND NINE HUNDRED FIFTY DOLLARS (\$69,950.00)**. Said payment is intended to compensate Contractor for all time, materials, and expenses. All equipment, tools and supplies necessary in the provision of services hereunder shall be supplied by Contractor at its own expense. Notwithstanding the above, the County shall have no obligation to pay for any work, services, or expenditures hereunder which have been rendered or incurred without prior authorization as described in Section 3. Furthermore, in no event will the County be obligated to compensate Contractor more than **\$69,950.00** or shall Contractor be required to provide services, which would entitle Contractor to compensation in excess of **\$69,950.00** such amount is subject to Section 10, "Limit of Appropriation".

Section 3. Authorization and Supervision.

The County representative, as assigned by Webb County on a project-by-project basis, will be the contact person for Contractor. The County Representative for this Project is **Mr. J. Carlos Flores, MBA, LI, CFM, Webb County Engineer Department**. Prior to the commencement of work under this agreement; Contractor shall obtain authorization to commence work hereunder from the County Representative. Contractor shall provide competent, full-time supervision of the work at all times during the term of this Agreement.

Section 4. Method of Payment.

As required by County Representative, on or about the last day of each month during the term of this Agreement, Contractor shall submit an itemized statement to the County Representative, setting forth in detail the services provided hereunder and the compensation claimed therefor. The statement shall be in a form acceptable to the County Auditor and shall include such other details as may be requested by the County Auditor for verification purposes. The County Representative will review the statement and approve it with such modifications as may be deemed appropriate. Thereafter the County Representative shall forward the statement with any modifications to the County Business Office for payment. **For each approved statement, County shall withhold Five Percent (5%) as retainage from the payment amount owed the Contractor.** The County shall pay the statement amount approved by the County Representative less retainage within thirty (30) days after the County Auditor approves same.

Section 5. Term and Liquidated Damages.

This agreement is effective upon execution by both parties; however, Contractor shall have Sixty (60) calendar days to substantially complete the Project, unless terminated sooner in accordance with the provisions hereof. Contractor shall not commence Work on the Project until receiving a "Notice to Proceed" from the County's Representative, Mr. Flores, of the county's engineering department. Contractor shall achieve substantial project completion by the date stated in the "Notice to Proceed." In the event of delay in substantial completion of the Project undertaken by Contractor beyond the substantial completion date, Contractor shall pay liquidated damages to County in the amount of Two Hundred Dollars (\$200.00) per day until Project is completed. County and Contractor agree that liquidate damages as described in this Agreement are a genuine estimate of the County's sole remedy for such delay. Delay caused by Force Majeure events or by actions of the County shall not constitute resulting in the payment of liquidated damages.

Section 6. Compliance.

Contractor agrees to perform the services hereunder in accordance with generally accepted standards applicable thereto and shall comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services performed hereunder. Contractor shall not access any information which they are not authorized to receive, and under no circumstances shall Contractor at any time, during the term of this Agreement or thereafter, release or divulge any confidential material, information or documents received during the performance of their services hereunder without the express written consent of the County, nor shall Contractor copy, recreate or use any such confidential information or documents other than for the performance of this agreement. Contractor shall obtain, at its own expense, all permits, certificates, and licenses as may be required in the performance of the services required hereunder.

Section 7. Indemnity.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND SAVE WHOLE AND HARMLESS THE COUNTY AND ALL ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER, NAME, AND DESCRIPTION BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES, INCLUDING DEATH, RECEIVED OR SUSTAINED BY ANY PERSON OR PROPERTY ON ACCOUNT OF, ARISING OUT OF, OR IN CONNECTION WITH, ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. CONTRACTOR SHALL ALSO DEFEND AND INDEMNIFY THE COUNTY AGAINST CLAIMS BY ANY SUBCONTRACTOR, SUPPLIER, LABORER, MATERIALMAN, OR MECHANIC FOR PAYMENT FOR WORK OR MATERIALS PROVIDED ON BEHALF OF CONTRACTOR IN THE PERFORMANCE OF THE SERVICES HEREUNDER; AND ALL SUCH CLAIMANTS SHALL LOOK SOLELY TO CONTRACTOR AND NOT TO THE COUNTY FOR SATISFACTION OF ALL SUCH CLAIMS.

Section 8. Assignment.

Other than as contemplated in Exhibit "A", Contractor shall not sell, assign, transfer or convey this Agreement, in whole or in part, without the prior written consent of the County. As a condition of such consent, Contractor shall remain liable for completion of the services in the event of default by the successor contractor or assignee.

Section 9. Insurance.

Prior to the beginning of any work hereunder, Contractor shall provide proof and maintain the following insurance policies:

Workmen's Compensation -Texas Statutory limits

Employer's liability insurance with limits of not less than \$1,000,000.00 each occurrence each accident; \$1,000,000.00 by disease each-occurrence; \$1,000,000 by disease aggregate.

Commerical General Liability with limits of not less than \$1,000,000.00 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations and a separate products/completed operation aggregate. There should be no XCU (Explosion, Collapse, Underground) exclusion. Coverage must be written on an occurrence form. Contractual Liability must be maintained covering the Contractor's obligations contained in the contract. The general aggregate limit must be at least two (2) times each occurrence limit.

Commercial Automobile Liability Insurance at minimum combined single limits of \$1,000,000 per occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. Webb County accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

A Comprehensive General Liability insurance form may be used in lieu of a Commercial General Liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of \$1,000,000 each-occurrence, combined single limit, and coverage must include a broad form Comprehensive General Liability Endorsement, products/completed operations, XCU hazards, and contractual liability.

With reference to the foregoing insurance requirement, Contractor shall specifically endorse applicable insurance policies as follows:

1. Webb County shall be named as a primary and non-contributory additional insured with respect to General Liability and Automobile Liability.
2. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
3. A waiver of subrogation in favor of Webb County shall be contained in the Workers Compensation and all liability policies.
4. All insurance policies shall be endorsed to require the insurer to immediately notify Webb County of any material change in the insurance coverage.
5. All insurance policies shall be endorsed to the effect that Webb County will receive at least sixty- (60) days' notice prior to cancellation or non-renewal of the insurance.
6. All insurance policies, which name Webb County as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
8. Contractor may maintain reasonable and customary deductibles, subject to approval by Webb County.
9. Insurance must be purchased from insurers that are financially acceptable to Webb County, but in no event with a lower rating than A-: VII in the latest *A. M. Best* book.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

1. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
2. Shall specifically set forth the notice-of-cancellation or termination provisions to Webb County.

All contractors and subcontractors must meet minimum OSHA safety requirements as applicable to their operations. If the size of the job warrants, an umbrella policy that sits over the auto, general liability and employer's liability section of the worker's comp policy may be required.

Upon request, Contractor shall furnish Webb County with certified copies of all insurance policies. This proof is in the form of a letter or certificate from Contractor's insurance company, and must be maintained as current by Contractor throughout the term of this agreement. The certificate of insurance shall include sixty (60) day notice of cancellation. **Webb County must be included as an additional insured on each policy.**

Section 10. Payment Bond

Contractor shall provide a payment bond in the penal amount of the contract price that being Sixty-Nine Thousand Nine-Hundred Fifty Dollars (\$69,950.00). Bond must be issued by companies authorized and admitted to do business in the State of Texas and rated A-:VII or better by A.M. Best Company (Best's Key Rating Guide, current Edition, and as amended) and/or otherwise acceptable to the County. Contractor shall supply the required Payment bond to the County within Seven (7) days of execution of this Contract or not later than Ten (10) working days prior the date of the scheduled installation of materials and provision of services under this contract which shall be the "DEADLINE" for compliance herewith and which both parties have mutually agreed to as an "Express Condition Precedent" to this contract.

Section 11. Limit of Appropriation.

Contractor has been advised by the County, and Contractor understands and agrees, such understanding and agreement being of the absolute essence of this agreement, that the County shall have available the sum of **\$69,950.00** specifically allocated to fully discharge any and all liabilities of the County under this Contract, and that the total maximum compensation that Contractor may become entitled to hereunder, and the total maximum sum that the County shall become liable to pay to Contractor hereunder, shall not exceed under any conditions, circumstances or interpretations thereof the amount certified for the applicable fiscal year.

Section 12. Termination.

Webb County hereto may terminate this agreement at any time, either with or without cause, by giving the other party at least thirty days advance written notice. As soon as practicable after termination, Contractor shall submit, in accordance with Section 4, its statement showing in detail the services performed hereunder to the date of termination.

Section 13. Address of Notices.

Any notice required or permitted to be given by one party to the other party under this Agreement may be given by certified or registered U. S. mail, postage prepaid, addressed to the appropriate party as follows:

Webb County

Tano E. Tijerina
Webb County Judge
1000 Houston Street
Laredo, Texas 78040

Midas Contractors, LLC.
Nelso Molina, Manager
2710 Zacatecas Street
Laredo, Texas 78046-8517
(956) 231-9142

Copy to:

J. Carlos Flores, MBA, LI, CFM
Webb County Engineering Department
1620 Santa Ursula, 2nd Floor
Laredo, Texas 78040
jcflores@webbcountytx.gov

Any notice given as herein provided shall be deemed given and received upon deposit in the U.S. mail.

Section 14. Entire Agreement.

This instrument contains the entire agreement between the parties relating to the rights granted and the obligations herein assumed. Any oral representations or modifications concerning this

instrument shall be of no force or effect. This Contract shall be binding and effective only is and when it has been signed by both parties.

Section 15. Inconsistencies.

Where there exists any inconsistency between this Contract and other provisions of collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this Contract shall control.

Section 16 Severability.

Each paragraph and provision hereof is severable from the entire Contract and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

Section 17 Law of Texas/Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regards to choice of law rules of any jurisdiction and shall be enforced in the Webb County, Texas. County and Contractor agree that any litigation regarding this Contract shall take place in the State Courts of Webb County, Texas.

Section 18 Entire Agreement.

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No other prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless signed by both parties and attached hereto and/or embodied herein.

Section 19 Amendment.

No changes to this Contract shall be made except upon written agreement of both parties.

Section 20 Headings.

The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.

Section 21 Waiver.

The failure on the part of any party to exercise or to delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, except as expressly set forth herein.

Section 22 Counterparts.

This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.

Section 23 Terminology and Definitions.

All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

Section 24 Rule of Construction.

The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.

Section 25 Immunity.

Webb County does not waive or relinquish any immunity or defense on behalf of themselves, their trustees, commissioners, offices, employees and agents as a result of the execution of this Agreement and performance of the functions and obligations described herein.

Section 26 Legal Compliance.

The parties hereto agree to comply fully with all applicable federal, state and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this agreement. In the event that any of the parties hereto are required by law or regulation to perform any act inconsistent with this agreement, or to cease performing any act required by this agreement, this agreement shall be deemed to have been modified to conform with the requirements of such law, regulation or rule.

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

IN WITNESS WHEREOF, the parties aforesaid have duly executed the foregoing instrument, or caused the same to be executed in duplicate originals on the dates set forth below.

WEBB COUNTY

CONTRACTOR
MIDAS CONTRACTORS, LLC.

Tano E. Tijerina
Webb County Judge

Nelson Molina, Managere

Date: _____, 2024

Date: _____, 2024

ATTESTED:

Margie Ramirez-Ibarra
Webb County Clerk

APPROVED AS TO FORM:

Fortunato G. Paredes
Webb County Civil Legal Division

*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

EXHIBIT A
GENERAL CONTRACT REQUIREMENTS, SCOPE OF SERVICES AND PRICING

Article 1 GENERAL CONTRACT REQUIREMENTS

Section 1.01 Description of Work.

The purpose of this Contract is for the Contractor to furnish all labor, equipment, materials, and incidentals necessary to undertake the Scope of Services outlined in Section 1 of the Agreement.

Section 1.02 Location & Construction Schedule.

Contractors Services under this Agreement shall be performed at the Webb County Justice Center, 1101 Victoria Street, Laredo, Texas 78041.

At the County Representative's request the Contractor shall provide a construction schedule. The construction schedule will be a bar-type schedule and shall be of sufficient detail to show construction sequence for different items of work.

Section 1.03 Payment.

At the earliest possible date after the first day of each calendar month, the County Representative will make a current estimate in writing of the amount of Work performed by the Contractor through the last day the preceding calendar month, including materials as provided by the Contractor, and less any materials previously purchased by the Contractor and subsequently paid for by the County.

The County Representative shall also, unless otherwise provided in the contract documents, determine the reasonable invoice cost of all materials and equipment for subsequent incorporation into the Work that have been delivered and suitably stored at the site (or, with advance approval by the County Representative, stored off-site at an agreed location,) but which remain unincorporated into the Work, and not previously paid for by the County, such reasonable cost being hereinafter called the "Current Value of Stored Materials and Equipment". The County Representative shall determine the number of elapsed calendar days during the performance of the Work, and the amount of any accrued liquidated damages. Within thirty (30) days after audit and approval of the County Representative's determinations for each month by the County Auditor, the County shall pay to the Contractor an amount equal to 95% of both the approved Current Value of the Work and the approved Current Value of Stored Materials and Equipment, less the amount of all prior payments hereunder to the Contractor and less the amount of any accrued liquidated damages. Stored materials and equipment for which reimbursement has been received by the Contractor may not be removed from its place of storage without the County Representative's permission except for incorporation into the Work. The value of materials for which payment has been made while stored shall not be included in the Current Value of the Work. The 5% withheld from partial payments will be payable to the Contractor, subject to any adjustments made in accordance with this Agreement, at the time of final payment.

Section 1.04 Acceptances and Final Payment.

The Contractor shall, as soon as practicable after the completion of the project shall submit for payment an invoice to pay the balance of what is owed Contractor under the Contract. Within thirty (30) days after approval by the Commissioners' Court and the County Auditor, the County shall pay the Contractor the amount of the estimate or Final Estimate after deducting therefrom all previous payments and all amounts to be retained under the provisions of this Contract. All prior Partial Estimates and Payments shall be subject to correction in the Final Estimate and Payment. No payment by the County shall be construed to be an acceptance of any defective Work or improper materials, or a release from any claim for damages. The payment of the final amount due under the Contract, and the adjustment and payment of the bill rendered for any Work done in accordance with any alterations of the Contract by a Change Order, shall release the County and all Representatives from any and all claims or liability on account of Work performed under the Contract or alterations thereof. The Contractor will examine the Final Estimate and if correct will certify under oath to the payment by the Contractor of all claims against the Contractor for labor, materials, and supplies, furnished the Contractor by all persons and firms in the performance of the Contract.

Section 1.05 Permits & Licenses.

If required, the Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work.

Section 1.06 Construction Manager.

A full-time designated Construction Manager must be present at all times that work is in progress, and must be capable of making decisions on the Contractor's behalf.

Section 1.07 Subcontractors.

At the request of the County Representative, the Contractor must submit a list of all subcontractors prior to commencing work. During the course of this project, the County Representative must be notified of any changes in subcontractors.

Article II. PROSECUTION OF THE PROJECT

Section 2.01 Parking.

The Contractor shall be responsible for the parking of his vehicles in a legal manner at no additional expense or inconvenience to Webb County.

Section 2.02 Storage.

1. General - The Contractor shall be fully responsible for the security and safe keeping of any stored materials.
2. The Contractor may use approximate open areas of the site for storage of materials at his own risk. The County must approve of storage areas.
3. The Contractor may not use any existing part of any existing Webb County building for storage of materials unless approved in writing to do so by the County Representative.

4. Remote - The Contractor may use a location "on" or "off" the job site for storage of materials. However, if he intends to submit requests for payment for stored materials, then Webb County, at its discretion, may pay for actual cost of material stored (less stipulated retainage) under the following conditions:
 - a. The Contractor shall apply for and receive advanced written approval from the County Representative.
 - b. The intended location must be judged suitable and secure by the County Representative and the materials shall be fully insured.
 - c. The Contractor shall pay all costs related to the storage including loading, unloading, transportation, warehouse rent, and insurance.
 - d. The quantity and quality of material shall be inspected by the County representative, to ascertain compliance with the Contract Documents, paid invoices and materials list.

Section 2.03 Hours of Work.

1. The building/site will be occupied by Webb County during the course of the project.
2. The County Representative shall establish time/hours that work shall be executed as best to suit the facility function and/or activity.
3. If it becomes necessary to work on weekends, holidays, and after the hours established by the County Representative, a written request to work shall be submitted for approval to the County, twenty-four (24) hours prior to performing the work. Access to the site during these hours shall be coordinated through the County Representative.
4. Work shall be performed so as to not interfere with normal activities occurring outside the work area.
 - a. Building Projects - If inclement weather impacts any portion of the project such that the project completion date is delayed (regardless of whether work is being performed on any other scheduled portion of the project during that time), then that day shall be deemed an Inclement Weather Day or Rain Day.

Section 2.04 Work Commencement.

If requested by the County Representative, the Contractor shall notify the County Representative forty-eight (48) hours prior to starting or restarting work on the project.

Section 2.05 Cover-up Inspection

The Contractor shall notify the County Representative a minimum of forty-eight (48) hours prior to any cover-up inspection. Any work covered-up prior to inspection and sign off shall be considered non-conforming to contract requirements.

Section 2.06 Wage Scale Posting.

If requested by the County Representative, the Contractor shall post the wage scale at all times at the site of work in a prominent place where it can be easily seen by the workers.

Section 2.07 Pay Estimate Posting.

If requested by the County Representative, the Contractor shall post the most current processed monthly pay estimate for the project at the site of work in a prominent place where it can be easily seen by the subcontractors.

Article III. CONTRACT ADMINISTRATION PROCEDURES

Section 3.01 Clarifications.

All clarifications required by the Contractor shall be requested in an expeditious manner from the County Representative in the written form of a Request for Information (RFI). No additional compensation to the Contractor will be allowed for delays resulting from late requests for clarifications. Responses to RFI's will not be binding on Webb County until confirmed in writing by the County Representative.

Section 3.02 Field Modifications.

No person shall have the authority to verbally alter the requirements of the contract documents. No field modifications will be binding on Webb County unless confirmed in writing from the County Representative, or documented, signed and dated by the Representative on the set of "Record Drawings" in the field office.

Section 3.03 Changes in Contract:

All proposed costs for a change in contract must be supported by itemized accounting of material, equipment and labor in sufficient detail to allow value analysis by the County Representative. Webb County shall have up to ten (10) calendar days from date of receipt of written proposal for review and approval by the County Representative.

On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition.

Section 3.04 Separate Construction by Webb County.

Webb County may administer separate construction contract(s) on this project site simultaneously. Webb County may coordinate the separate contracts and the Contractor shall extend full cooperation towards successful execution of all separate contracts.

Section 3.05 Preservation and Restoration of Property.

Webb County reserves the right to repair damages to existing property made necessary through an act, omission or misconduct, or in consequence of the non-performance of the Work on the part of the Contractor, his employees or subcontractors, if the Contractor fails to respond to written demand for the repair within 24 hours of such notification; Repairs made by the County on the Contractor's behalf shall be reimbursed by the Contractor to the County or said costs of

repairs may be deducted from amounts owed to the Contractor.

Section 3.06 Substantial Completion.

Substantial Completion occurs when the project can be used for its intended purpose. Substantial completion occurs when all mechanical, and electrical systems and fixtures are operational. The County Representative shall issue a substantial completion certificate setting forth a time limit for remedying the punch list items, as determined by the County Representative. The substantial completion certificate effectively stops the contract time. Failure of the Contractor to complete punch list items within the time limit shall result in the assessment of liquidated damages being assessed against the contract in an amount equal to one half of the liquidated damages applicable to delays prior to substantial completion. Warranty periods and dates for the owner to assume responsibility for utilities, shall be the date of substantial completion.

Section 3.07 Warranties.

All items having a manufacturer's warranty installed under this contract shall be installed by or under the directive of the manufacturer or his certified agent in order to conform with the manufacturer's warranty requirements. All work involving manufacturer's products shall be performed in accordance with manufacturer's recommendations in order to maintain all warranties.

Immediately prior to expiration of any applicable one (1) year standard warranty period, or any extended warranty such as roofing, the Contractor shall inspect the Work in the company of the County Representative. The County shall be given not less than fourteen (14) calendar days notice prior to the anticipated date of warranty expiration. Where any portion of the Work has proven to be defective and requires replacement, repair or adjustment, the Contractor shall immediately provide materials and labor necessary to remedy such defective Work and shall prosecute such Work without delay until completed to the satisfaction of the County Representative, even though the date of completion of the corrective work may extend beyond the expiration date of the warranty period.

Section 3.08 Emergencies.

In emergencies affecting the safety or protection of persons, or the Work, or Property at the site, or adjacent thereto, the Contractor, without special instruction or authorization from the County or the County Representative, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the County Representative prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Document have been caused thereby.

Section 3.09 Barricades, Warning Lights & Signs on All Projects.

Unless provided otherwise in the Contract Documents, the Contractor is Solely responsible for furnishing, erecting and maintaining, suitable barricades, warning signs, barriers, cones, lights, flags, and other devices as are or may be necessary to adequately protect the Work and shall warn, advise and safeguard the public over the entire project, including, but not limited to, sections of the project which the Contractor closes to traffic.

The Contractor's responsibility in this regard extends for the entire duration of the Work, from the start of construction until acceptance by the County.

Section 3.10 Sanitary Provisions.

The Contractor shall provide and maintain in a neat, sanitary condition, such accommodations for the use of its employees as may be necessary to comply with the requirements of any Federal, State, County or City laws, ordinances or regulations.

Section 3.11 Safety & Health Standards.

The Contractor shall observe and comply with all safety and health standards and to all legislation and amendments enacted for the safety and health of Contractor's employees. Such safety and health standards shall apply to all Subcontractors, and the Contractor shall be responsible for initiating, maintaining, supervising and inspecting safety programs, safety systems and safety precautions, including, but not limited to, trench safety requirements, in connection with the Work.

Section 3.10 Authority of County Representative.

The Work shall be done under the direct observation of the County Representative and to the Representative's satisfaction. The County Representative shall decide any and all questions which may arise as to the quality or acceptability of materials furnished, work performed, and rate of progress of the Work, and shall decide all questions which may arise as to the interpretation of the Drawings and Specifications and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor. The County Representative's decisions under this provision shall be final and binding on both parties hereto.

Section 3.11 Contractor's Responsibility for Work.

Until the acceptance of the Work by the County Representative as evidenced in writing; the Work shall be under the charge and care of the Contractor. The Contractor shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause, whether arising from the execution or non-execution of the Work. The Contractor shall rebuild, repair, restore and make good at the Contractor's own expense all injuries or damages to any portion of the Work before its completion and acceptance. The Contractor shall keep the premises free from accumulation of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work, the Contractor shall leave the site clean and ready for its use by the County.

Section 3.12 Preservation & Restoration of Property.

The Contractor shall be responsible for the preservation of the County's property adjacent to the project. When or where any direct or indirect damage is done to the County's, or adjacent, property by or on account of any act, omission, neglect or misconduct in the performance of the Work or in consequence of the nonperformance thereof on the part of the Contractor, the Contractor shall restore, at the Contractor's own expense, such property to a condition equal to that existing before such damage was done by repairing, rebuilding or otherwise restoring same, or the Contractor will make good such damage in an acceptable manner.

Section 3.13 Protection against Claims of Subcontractors, Laborers, Material & Furnishers of Machinery.

The Contractor shall indemnify and save the County harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, power tools and all supplies, including commissary, incurred in the furtherance of the performance of the Contract. When so desired by the County, the Contractor shall furnish satisfactory evidence that all obligations of the nature herein above designated have been paid, discharged or waived.

Section 3.14 Inspection.

Inspectors/County Representative shall be authorized to inspect all work in progress, all Work completed and all materials furnished. The Inspector/County Representative shall not be authorized to revoke, alter, enlarge, relax or release any requirements of these Specifications. If requested by the County Representative, the Contractor shall also furnish the County Representative a statement from the Subcontractor that the Subcontractor understands the Drawings and Specifications and is properly qualified to perform such Work. No Subcontract will in any way affect the terms of the Contract between the County and the Contractor or relieve the Contractor of any of its obligations thereunder.

The Inspector/County Representative shall at all times have access to all parts of the shop where material under this Contract is being manufactured. Material that does not conform to the Specifications accepted through oversight or otherwise; may be rejected at any stage of the Work. The Contractor shall remove and rebuild at the Contractor's own expense any part of the project that has been improperly executed, even if it has been included in the monthly estimates. If the Contractor refuses or neglects to correct any defective work, it may be corrected by the County, at the Contractor's expense.

Whenever the Contractor is permitted or directed to do night work, or to vary the period during which the Work is carried on each day, the Contractor shall give the County Representative due notice so that inspections may be performed. Such Work shall be done without extra compensation. The Contractor will furnish the County Representative a schedule for this night work.

Should the County Representative require it, the Contractor shall at any time during the construction of Work, make openings for inspection through any part of said Work to such extent as the County Representative may direct, and the Contractor shall make the same good again to the satisfaction of the County Representative. Should the Work, from the opinion of the County Representative, be found to be faulty in any respect, the Contractor at the Contractors expense shall replace all such faulty Work.

Section 3.15 Record Documents.

The Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These Record documents, together with all approved Samples

and a counterpart of all approved Shop Drawings, will be available to County Representative for reference. Upon completion of the Work, these Record documents, along with all Samples and Shop Drawings, must be delivered to the County Representative.

Section 3.16 Abandonment of Work.

If the Contractor fails to begin the work within the time specified; or fails to make deliveries on to provide sufficient workmen and equipment or sufficient materials to insure the prompt completion; or performs the Contract unsuitably; or neglects or refuses to remove materials or perform a new such Work as shall have been rejected as defective or unsuitable; or discontinues the prosecution of the Work; or becomes insolvent or is declared bankrupt; or commits any act of bankruptcy or insolvency; or allows any final judgment to stand against the Contractor unsatisfied for a period of forty-eight (48) hours or longer; or makes an assignment for the benefit of creditors; or fails to comply with any of the conditions of the Contract to such an extent that the Contract is forfeited or abandoned by the Contractor, or declared abandoned or suspended by the County; or if the Contractor for any other cause whatsoever shall not carry on the Work or perform the Contract in an acceptable manner, then and in that event, the Surety on the Contractor's Performance Bond shall have the right and privilege, within seven (7) calendar days after the date of notice of such action from the County, to assume control of the Contract and all Work thereunder and to sublet or complete the Work in strict conformity with the provisions of said Contract. Failure of the Surety to do so within said seven (7) calendar days will result in an immediate forfeiture of all right to thereafter assume control of the Contract and the Work thereunder, in which event the County shall have the right to take the prosecution of the Work out of the hands of the Contractor and to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable, and enter into an agreement for the completion of the Contract according to the terms and provisions thereof or use such other methods as in the County Representative's opinion may be required or desirable for the completion of the Contract in an acceptable manner. All costs and charges incurred by the County, together with the costs of completing the Work, shall be deducted from any money due or which may become due said Contractor. In the event the cost and expense so incurred by the County is less than the sum which would have been payable under the Contract if it had been completed by said Contractor, then the said Contractor and/or Surety shall be entitled to receive the difference. In the event such cost shall exceed the amount which would have been payable under the Contract, then the Contractor and Surety shall be liable and shall pay to the County the amount of said excess.

Section 3.17 Termination for Convenience of the County.

The County may terminate this Agreement at any time by notice in writing to the Contractor. Upon receipt of such notice, the Contractor shall stop all work. Within thirty (30) days after receipt of notice of termination, the Contractor shall submit a statement, showing in detail the work performed under this Agreement to the date of termination. The County shall then pay the Contractor that proportion of the contract price which the work actually performed under this Agreement bears to the total work called for under this Agreement, less such payments as have been previously made. The County suggests that the Contractor have a similar termination provision in all its contracts inasmuch as the County will not compensate the Contractor for loss of profits or any other damage resulting from such termination.

Section 3.18 Guarantee.

The Contractor agrees to replace, without cost to the County, any Work found to be improper or defective and to make good all damage or other Work caused by such replacement. The guarantee period for the Work is one year from substantial completion of the project. Additional guarantees for specific items may also be required by the Specifications. The guarantees must be presented to, and approved by, the County Representative before project acceptance and Final Payment is made.

The Contractor will supply the County with copies of all guarantees and warranties, which have been made to the Contractor by suppliers or Subcontractors, with an assignment of these guarantees and warranties to the County. Assignments will not relieve the Contractor of the Contractor's responsibility in the case of a supplier's or Subcontractor's failure to fulfill guarantee or warranty provisions. If the Contractor is prevented for any reason from making any such assignment to the County, the Contractor hereby gives the County permission to enforce any and all non-assignable guarantees and warranties in the Contractor's name, and the Contractor shall pass on to the County any benefits derived therein.

Neither final completion of the project, nor any provision in the Contract Documents relieves the Contractor of responsibility for faulty materials or workmanship during guarantee periods.