

writing or in the form of drawings.

429. Design Consultant's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by WEBB COUNTY.

43. CLAIMS AND DISPUTES

431. **DEFINITION.** A Claim is a demand or assertion by one of the Parties seeking, as a matter of right, an adjustment or interpretation of Contract terms, payment of money, extension of time or other relief, with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between WEBB COUNTY and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. Except as contemplated by **Section 8.2** herein, every Claim of Contractor, whether for additional compensation, additional time or other relief including, but not limited to, claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Contractor by his/her signature) of Contractor, verifying the truth and accuracy of the Claim. The responsibility to substantiate a Claim shall rest with the Party making the Claim.

432. **TIME LIMIT ON CLAIMS.** Except for those Claims resulting from unusually severe weather, as addressed in **Section 4.3.6** herein, Contractor Claims must be initiated within fifteen (15) calendar days after occurrence of the event giving rise to such Claim. Claims by Contractor must be submitted by written notice to both WEBB COUNTY and Design Consultant. Claims by WEBB COUNTY must be submitted by written notice to Contractor. Failure by Contractor to submit written notice of the claim within fifteen (15) calendar days shall constitute a waiver of such claim.

433. **CONTINUING CONTRACT PERFORMANCE.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in **Sections 4.5.1, Section 9.7.1** and **Article 14** herein, Contractor shall proceed diligently with performance of the Contract and WEBB COUNTY shall continue to make payments in accordance with the Contract Documents.

434. **CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS.** If conditions are encountered at the Site which either are subsurface or are otherwise concealed physical conditions which were not known to Contractor and which differ materially from those indicated in the Contract Documents or in the reports of investigations and tests of subsurface and latent physical conditions provided by WEBB COUNTY to Contractor prior to the preparation by Contractor of its Bid, as referred to above, or are unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of

the character provided for in the Contract Documents in the general vicinity of the Project site, then Contractor promptly shall notify WEBB COUNTY and Design Consultant of such conditions before conditions are disturbed, and in no event more than three (3) workdays after first observation of the conditions. Upon notification by Contractor, Design Consultant promptly shall investigate such conditions and report its findings to WEBB COUNTY. If WEBB COUNTY and Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to **Section 4.5** herein.

43.5. **CLAIMS FOR ADDITIONAL COST.** If Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in this **Section 4.3** shall be given and accepted by WEBB COUNTY before proceeding to execute the Work, provided prior notice is not required for Claims relating to an emergency endangering life or property. Contractor shall file a Claim in accordance with this **Section 4.3** if Contractor believes additional cost is involved for reasons including, but not limited to:

- (1) a written interpretation from Design Consultant;
- (2) an order by WEBB COUNTY to stop the Work where Contractor was not at fault;
- (3) a written order for a minor change in the Work issued by Design Consultant;
- (4) failure of payment by WEBB COUNTY;
- (5) termination of the Contract by WEBB COUNTY for convenience;
- (6) WEBB COUNTY's suspension; or
- (7) other reasonable grounds.

43.6. **CLAIMS FOR ADDITIONAL TIME**

43.6.1. If Contractor wishes to make Claim for an increase in the Contract Time, written notice, as required in this **Section 4.3**, shall be given. Contractor's Claim shall include an estimate of probable impact of delay on progress of the Work in accordance with **Section 3.10.11** herein. In the case of a continuing delay, only one Claim is necessary.

43.6.2. Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of weather normally experienced at the job site, as determined from climatological data set forth by

National Weather Service and which affects the Project's critical path. Contractor shall bear the entire economic risk of all-weather delays and disruptions. Contractor shall not be entitled to any increase in the Contract Sum by reason of such delays or disruptions. With regard to Vertical projects with WEBB COUNTY, requests for an extension of time, pursuant to this **Section 4.3.6**, shall be submitted to WEBB COUNTY and Design Consultant not later than the fifteenth (15<sup>th</sup>) calendar day of the month following the month during which the delays or disruptions occurred and shall include documentation and all details reasonably available, demonstrating the nature and duration of the delays or disruptions and their effect on the critical path of the Schedule. With regard to Horizontal projects with WEBB COUNTY, upon Contractor reaching Substantial Completion, WEBB COUNTY and Contractor shall look back at the entire duration of the calendar day Project and review the totality of what Contractor claims were unusually severe weather disruptions. If the Project was delayed or disrupted due to unusually severe weather in excess of weather normally experienced over the entire duration of the Project, Contractor may make a Claim for an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of weather normally experienced at the job site, as determined from climatological data set forth by National Weather Service and which affects the Project's critical path. Any time extension granted to Contractor for either Vertical or Horizontal projects under **Section 4.3.6** shall be non-compensatory.

- 4.3.7. **INJURY OR DAMAGE TO PERSON OR PROPERTY.** If either Party to the Contract suffers injury or damage to person or property because of an act or omission of the other Party or an act or omission of others for whose acts such other Party legally is responsible (including, with respect to WEBB COUNTY, the acts or omissions of WEBB COUNTY's separate contractors), written notice of such injury or damage, whether or not insured, shall be given to the other Party within a reasonable time not exceeding three (3) calendar days after the discovery of the injury or damage. The written notice shall provide sufficient detail to enable the other Party to investigate the injury or damage.
- 4.3.8. **CHANGE IN UNIT PRICES.** As applicable, if unit prices are stated in the Contract Documents or subsequently are agreed upon by WEBB COUNTY and Contractor and if quantities originally contemplated are materially changed in a proposed Change Order or Field Work Directive, such that the application of such unit prices to quantities of Work proposed shall cause substantial inequity to WEBB COUNTY or Contractor, the applicable unit prices shall be equitably adjusted.
- 4.3.9. **CLAIMS FOR CONSEQUENTIAL DAMAGES.** Except as otherwise provided in this Contract, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply both to Claims by Contractor and to Claims by WEBB COUNTY:

- 43.9.1. No consequential, indirect, incidental, punitive or exemplary damages shall be allowed, whether or not foreseeable, regardless of whether based on breach of contract, tort (including negligence), indemnity, strict liability or other bases of liability.
- 43.9.2. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, on estimated losses of labor efficiency, on a comparison of planned man loading to actual man loading or on any other similar analysis used to show total cost or other damages.
- 43.9.3. Damages are limited to extra costs specifically shown to directly have been caused by a proven wrong for which the other Party is claimed to be responsible.
- 43.9.4. The maximum amount of any recovery for delay, to the extent damages for delay are not otherwise disallowed by the terms of the Contract Documents, shall be as is provided in **Article VIII** herein.
- 43.9.5. No damages shall be allowed for home office overhead or other home office charges or any Eichleay formula calculation, except or unless as expressly authorized by the Contract Documents.
- 43.9.6. No profit shall be allowed on any damage Claim, except or unless as expressly authorized by the Contract Documents.
- 4.3.10. **SUBCONTRACTOR PASS-THROUGH CLAIMS.** In the event any Subcontractor of Contractor asserts a Claim to Contractor that Contractor seeks to pass through to WEBB COUNTY under the Contract Documents, any entitlement to submit and assert the Claim as to WEBB COUNTY shall be subject to:
- 43.10.1. the requirements of **Section 4.3** herein of these General Conditions; and
- 43.10.2. the following additional three (3) requirements listed below, all three of said additional requirements shall be conditions precedent to the entitlement of Contractor to seek and assert such Claim against WEBB COUNTY:
- (1) Contractor shall:
- (a) have direct legal liability as a matter of contract, common law or statutory law to Subcontractor for

the claim Subcontractor is asserting; or

- (b) have entered into a written liquidating agreement with Subcontractor, prior to the Claim's occurrence, under which Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such Claim against WEBB COUNTY under said Contract and for paying to Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The relationship, liability or responsibilities shall be identified in writing by Contractor to WEBB COUNTY at the time such Claim is submitted to WEBB COUNTY and a copy of any liquidating agreement shall be included by Contractor in the Claim submittal materials.

(2) Contractor shall have reviewed the Claim of the Subcontractor prior to its submittal to WEBB COUNTY and independently shall have evaluated such Claim in good faith to determine the extent to which the Claim is believed in good faith to be valid. Contractor shall inform WEBB COUNTY it has made a review, evaluation and determination the Claim is being made in good faith and the claim is believed to be valid.

(3) Subcontractor making the Claim to Contractor shall certify to both Contractor and WEBB COUNTY Subcontractor has compiled, reviewed and evaluated the merits of such Claim and the Claim is believed in good faith by Subcontractor to be valid. A copy of the certification by Subcontractor shall be included by Contractor in the Claim submittal materials.

43.103. Any failure of Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such Claim shall constitute a waiver of any entitlement to submit or pursue such Claim.

43.104. Receipt and review of a Claim by WEBB COUNTY under this **Section 4.3** shall not be construed as a waiver of any defenses to the Claim available to WEBB COUNTY under the Contract Documents or at law.

#### 4.3.11. **WEBB COUNTY'S RIGHT TO ORDER ACCELERATION AND TO**

**DENY CLAIMED AND APPROPRIATE TIME EXTENSIONS, IN WHOLE OR IN PART.** Contractor acknowledges and agrees Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to WEBB COUNTY. The following provisions, therefore, shall apply:

43.11.1. If Contractor falls behind the approved construction schedule for whatever reason, WEBB COUNTY shall have the right, in WEBB COUNTY's sole discretion, to order Contractor to develop a schedule recovery plan to alter its work sequences or to otherwise accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as WEBB COUNTY reasonably may direct. Upon receipt, Contractor shall take any and all action necessary to comply with WEBB COUNTY's order. In such event, any possible right, if any, of Contractor to additional compensation for any acceleration shall be subject to the terms of this **Section 4.3.11**.

43.11.2. In the event WEBB COUNTY agrees Contractor is entitled to an extension of Contract Time and Contractor properly has initiated a Claim for a time extension in accordance with **Section 4.3** herein, WEBB COUNTY shall have the right, in WEBB COUNTY's sole discretion, to deny any portion of Contractor's Claim for an extension of Contract Time and order Contractor to exercise its commercially reasonable efforts to achieve Substantial Completion on or before the contractual date established, but for the existence of the event giving rise to the Claim, by giving written notice to Contractor provided within fourteen (14) calendar days after receipt of Contractor's Claim. If WEBB COUNTY denies Contractor's claim for an extension of Contract Time under this **Section 4.3.11**, either in whole or in part, Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date. If, after initiating good faith acceleration efforts and it is shown, through no fault of Contractor, Contractor fell behind on the approved construction schedule and Contractor still is unable to achieve Substantial Completion within the originally scheduled Contract Time, WEBB COUNTY shall not be entitled to Liquidated Damages. Nothing in this **Section 4.3.11.2** shall prohibit Contractor from filing a Claim for an extension of time Contractor feels it may be owed.

43.11.3. If WEBB COUNTY orders Contractor to accelerate the Work under **Section 4.3.11** herein, and Contractor would have been entitled to a time extension for a reason specifically allowed

under the Contract Documents for an amount of time that would have justified approval by WEBB COUNTY if not for the need and right to complete the Project within the stipulated period, Contractor may initiate a Claim for schedule recovery or acceleration costs, pursuant to **Section 4.3** herein. Any resulting Claim for these costs properly initiated by Contractor under **Section 4.3** herein shall be limited to those reasonable and documented direct costs of labor, materials, equipment and supervision solely and directly attributable to the actual recovery or acceleration activity necessary for Contractor to bring the Work back within the then existing approved construction schedule. These direct costs of Contractor include, but are not limited to, the premium portion of overtime pay for additional crew, shift, or equipment costs, if requested in advance by Contractor and approved in writing by WEBB COUNTY. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, profit and field overhead, not to exceed the markups permitted by this Contract, shall be allowed on the claimed costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING, BUT NOT LIMITED TO, HOME OFFICE OVERHEAD) OR ANY OTHER COSTS SHALL BE ALLOWED ON ANY ACCELERATION CLAIM.** WEBB COUNTY shall not be liable for any costs related to an acceleration claim other than those described in this **Section 4.3.11**.

4.3.12 **NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing in this contract shall be construed to waive WEBB COUNTY's Governmental Immunity from a lawsuit, which Immunity is expressly retained to the extent it is not clearly and unambiguously waived by State law.

#### 4.4. RESOLUTION OF CLAIMS AND DISPUTES

4.4.1. Claims by Contractor against WEBB COUNTY and Claims by WEBB COUNTY against Contractor, including those alleging an error or omission by Design Consultant but excluding those arising under **Section 10.3** and **Section 10.5** herein, shall be referred initially to Design Consultant for consideration and recommendation to WEBB COUNTY.

4.4.2. An initial recommendation by Design Consultant shall be required as a condition precedent to mediation or litigation of all Claims by the Parties arising prior to the date final payment is due, unless thirty (30) calendar days have passed after the Claim has been referred to Design Consultant with no recommendation having been rendered by Design Consultant.

443. Design Consultant shall review Claims and, within ten (10) work days of receipt of a Claim, take one or more of the following actions:
- (1) request additional supporting data from the Party making the Claim;
  - (2) issue an initial recommendation;
  - (3) suggest a compromise; or
  - (4) advise the Parties that Design Consultant is unable to issue an initial Recommendation, due to a lack of sufficient information or conflict of interest.
444. Following receipt of Design Consultant's initial recommendation regarding a Claim, WEBB COUNTY and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement is reached, either Party may request mediation of the dispute, pursuant to **Section 4.5** herein.
445. If Design Consultant requests either or any Party to provide a response to a Claim or to furnish additional supporting data, such requested Party shall provide a response or the requested supporting data to Design Consultant, advise Design Consultant when the response or supporting data shall be furnished or advise Design Consultant that no response or supporting data shall be furnished.
446. With receipt of all information requested by Design Consultant, Design Consultant shall review the Claim and all received information within ten (10) calendar days of receipt of the information and shall take one of the following actions:
- (1) issue a recommendation;
  - (2) suggest a compromise; or
  - (3) advise the Parties Design Consultant is unable to issue a recommendation due to lack information or conflict of interest.
447. Upon Design Consultant's action or inaction, the Parties may agree to accept recommendations made by either Party or may request mediation of the dispute pursuant to **Section 4.5** herein.
448. **WAIVER OF LIEN.** It is understood that, by virtue of this Contract, no mechanic, contractor, material man, artisan or laborer, whether skilled or unskilled, ever shall, in any manner, have a claim or acquire any lien upon the building or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said building or any of the improvements are so erected, built or situated.



4.5. ALTERNATIVE DISPUTE RESOLUTION

- 4.5.1. **CONTINUATION OF WORK PENDING DISPUTE RESOLUTION.** Each Party is required to continue to perform its obligations under this Contract pending the final resolution of any dispute arising out of or relating to this Contract, unless it would be impossible or impracticable under the circumstances then present.
- 4.5.2. **REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS.** Before invoking mediation or any other alternative dispute process set forth herein, the Parties to this Contract agree that they first shall try to resolve any dispute arising out of or related to this Contract through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. Both WEBB COUNTY and Contractor agree that this step shall be a condition precedent to use of any other alternative dispute resolution process. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a Party delivers a written notice of such dispute to the other, then the Parties shall proceed with the alternative dispute resolution process contained in **Section 4.5** herein, including mediation and/or litigation. All negotiations pursuant to this **Section 4.5** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- 4.5.3. **MEDIATION.** In the event that WEBB COUNTY and/or Contractor contend that the other has committed a material breach of this Contract, or the Parties cannot reach a resolution of a claim or dispute pursuant to **Section 4.4** herein, as a condition preceding to filing a lawsuit, either Party shall request mediation of the dispute with the following requirements:
- 4.5.3.1. Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both Parties.
- 4.5.3.2. In the event WEBB COUNTY and Contractor are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this **Section 4.5** shall be deemed to have occurred.
- 4.5.3.3. The Parties shall share the mediator's fee and any mediation filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Webb County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof.

No provision of this Contract shall waive any immunity or defense. No provision of this Contract is consent to a suit.

#### 4.6. INTERNET-BASED PROJECT MANAGEMENT SYSTEMS.

At its option, WEBB COUNTY may administer its design and construction management through an Internet-based Project Management system. In such cases, Contractor shall conduct communication through this medium and perform all Project-related functions utilizing this management system, to include all correspondences, submittals, Requests for Information, vouchers, payment requests and processing, Amendments, Change Orders and other administrative activities. When such a management system is employed, WEBB COUNTY shall administer the software, provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

### ARTICLE V. SUBCONTRACTORS

#### 5.1. DEFINITION

A Subcontractor is defined and used herein as a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor, Sub-Consultant or an authorized representative of Subcontractor or Sub-Consultant. The term "Subcontractor" does not include a separate contractor or Subcontractor of a separate contractor.

#### 5.2. AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1. Contractor shall, prior to entering into an agreement with such Subcontractor, notify WEBB COUNTY in writing of the names of all proposed first-tier Subcontractors for the Work.

5.2.2. Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom WEBB COUNTY may have reasonable objection. A Subcontractor or other person or organization identified in writing to WEBB COUNTY, prior to the Notice of Award and not objected to in writing by WEBB COUNTY prior to the Notice of Award, shall be deemed acceptable to WEBB COUNTY. Acceptance of any Subcontractor, other person or organization by WEBB COUNTY shall not constitute a waiver of any right of WEBB COUNTY to reject defective Work. If WEBB COUNTY, after due investigation, has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall be required to submit an acceptable substitute. Contractor shall not be required to employ any Subcontractor, other

person or organization against whom Contractor has reasonable objection.

- 5.2.3. Contractor fully shall be responsible to WEBB COUNTY for all acts and omissions of its Subcontractors, persons and organizations directly or indirectly employed by them and persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between WEBB COUNTY and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of WEBB COUNTY to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. WEBB COUNTY may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.
- 5.2.4. The divisions and sections of the Specifications, as well as the identifications of any Drawings, shall not control Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.
- 5.2.5. All Work performed for Contractor by a Subcontractor shall be performed pursuant to an appropriate agreement between Contractor and Subcontractor which specifically binds Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of WEBB COUNTY.

### 5.3. SUB-CONTRACTUAL RELATIONS

- 5.3.1. By appropriate agreement, written where legally required for validity, Contractor shall require each Subcontractor, to the extent of the Work to be performed by Subcontractor, to be bound to Contractor by the same terms and conditions of the Contract Documents. Through that binding commitment, Subcontractor shall assume all the obligations and responsibilities, including the responsibility for safety of Subcontractor's Work and workers, which Contractor, by these Documents, assumes toward WEBB COUNTY and Design Consultant. Each Subcontractor agreement shall preserve and protect the rights of WEBB COUNTY and Design Consultant under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof shall not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-Subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of all Subcontractor agreement(s), copies of the Contract Documents to which Subcontractor(s) shall be bound. Subcontractors similarly shall make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors.

### 5.4. CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each Subcontractor agreement for a portion of the Work assigned by Contractor to WEBB COUNTY shall provide:

- 5.4.1. an assignment is effective only after termination of the Contract by WEBB COUNTY and only for those Subcontractor agreements which WEBB COUNTY accepts by notifying Subcontractor and Contractor in writing; and
- 5.4.2. an assignment is subject to the prior rights of the Surety, if any, obligated under bond relating to the Contract.
- 5.4.3. upon any such assignment, if the Work has been suspended for more than thirty (30) calendar days, Subcontractor's compensation equally shall be adjusted for increase in cost resulting from the suspension.

#### **ARTICLE VI. CONSTRUCTION BY WEBB COUNTY OR BY SEPARATE CONTRACTS**

- 6.1. WEBB COUNTY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS
  - 6.1.1. WEBB COUNTY reserves the right to perform construction or operations related to the Project with WEBB COUNTY's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under General Conditions of the Contract identical or substantially similar to these. If Contractor claims that a delay or additional cost is involved, due to such action by WEBB COUNTY, Contractor shall make a Claim as provided in **Section 4.3** herein.
  - 6.1.2. When separate contracts are awarded for different portions of the Project or for other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor that executes each separate WEBB COUNTY Contractor contract.
  - 6.1.3. WEBB COUNTY shall provide for coordination of the activities of WEBB COUNTY's own forces and of each separate contractor with the Work of Contractor and Contractor fully shall cooperate with said coordination. Contractor shall participate with other separate contractors and WEBB COUNTY in reviewing all construction schedules when directed by WEBB COUNTY to do so. Contractor shall make any revisions to its construction schedule deemed necessary after said joint review and mutual agreement. The revised construction schedules then shall constitute the schedules to be used by Contractor, separate contractors and WEBB COUNTY until subsequently revised.
  - 6.1.4. Unless otherwise provided in the Contract Documents, when WEBB COUNTY

Exhibit "D"

Webb County General Conditions  
Webb County HVAC Upgrades (JP Precinct 2, Place 2)

and WEBB COUNTY's own forces perform construction or operation related to the Project, WEBB COUNTY shall be subject to the same obligations and to have the same rights that apply to Contractor under these General Conditions and the Contract Documents.

## 6.2. MUTUAL RESPONSIBILITY

6.2.1. Contractor shall afford WEBB COUNTY and WEBB COUNTY's separate contractor(s) reasonable opportunity for the introduction and storage of materials and equipment, the performance of their activities and the coordination of Contractor's construction and operations with theirs, as required by the Contract Documents.

6.2.2. If part of Contractor's Work depends upon the construction or operations by WEBB COUNTY or a separate contractor for the proper execution or results, Contractor shall, prior to proceeding with that portion of the Work, promptly report to WEBB COUNTY apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to so report shall constitute an acknowledgment that WEBB COUNTY's separate contractor's completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3. WEBB COUNTY shall be reimbursed by Contractor for costs incurred by WEBB COUNTY which are payable to a separate contractor because of delays, improperly timed activities or defective construction of Contractor. WEBB COUNTY shall be responsible to Contractor for costs incurred by Contractor because of delays, improperly timed activities and damage to the Work or defective construction of WEBB COUNTY's separate contractor(s).

6.2.4. Contractor promptly shall remedy any damage wrongfully caused by Contractor or its Subcontractor(s) to any completed or partially completed construction or to property of WEBB COUNTY or WEBB COUNTY's separate contractor(s), as provided in **Section 10.2.5** herein.

6.2.5. WEBB COUNTY and each separate contractor shall have the same responsibilities for cutting and patching as are described for Contractor in **Section 3.14** herein.

## 6.3. WEBB COUNTY'S RIGHT TO CLEAN UP

If a dispute arises among or between Contractor, WEBB COUNTY's separate contractor(s) and WEBB COUNTY, as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, WEBB COUNTY may clean up and those costs shall be allocated amongst those parties responsible.

## ARTICLE VII. CHANGES IN THE WORK

### 7.1. GENERAL

- 7.1.1. Changes in the Work may be accomplished, after the execution of the Contract and without invalidating the Contract, by Change Order, Field Work Directive/Force Account or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum, subject to the limitations stated in this **Article VII** and elsewhere in the Contract Documents.
- 7.1.2. A Change Order shall be based upon agreement between WEBB COUNTY and Contractor; a Field Work Directive requires a directive by WEBB COUNTY and, if necessary, Design Consultant and may or may not be agreed to by Contractor; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Sum may be issued by WEBB COUNTY.
- 7.1.3. Changes in the Work shall be performed under applicable provisions of the Contract Documents and Contractor promptly shall proceed with the changed Work, unless otherwise provided in a Change Order, Field Work Directive or order for a minor change in the Work or in this **Article VII**.
- 7.1.4. Changes resulting from Change Orders, Field Work Directives or orders for minor changes shall be recorded by Contractor on the As-Built record documents.

### 7.2. CHANGE ORDERS

- 7.2.1. A Change Order is a written modification of the Contract signed by both WEBB COUNTY and Contractor (and approved by WEBB COUNTY COMMISSIONERS COURT, if required) that authorizes an addition, deletion or revision in the Work or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Contract.
- 7.2.2. Methods used in determining adjustments to the Contract Sum may include those listed in **Section 7.3.4** herein.
- 7.2.3. Acceptance of a Change Order by Contractor shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including, but not limited to impact, delay or acceleration damages arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and any extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. The execution of a Change Order by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, cost and additional time, if any. This Contract, as amended, forever

releases any Claim against WEBB COUNTY for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release of any Claim applies to Claims related to the cumulative impact of all Change Orders and to any Claim related to the effect of a change on unchanged Work.

724. WEBB COUNTY or Design Consultant shall prepare Change Orders and Field Work Directives and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, which Contractor promptly shall carry out and record on the As-Built record documents.

725. Contractor and Subcontractors shall be entitled to include overhead and profit in any Change Order only as provided by Project Specifications.

### 7.3. FIELD WORK DIRECTIVES

731. A Field Work Directive is a written directive signed by WEBB COUNTY and, if necessary, Design Consultant directing a change in the Work prior to agreement on an adjustment, if any, in the Contract Sum or Contract time, or both. WEBB COUNTY may, by Field Work Directive and without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with any changes to the Contract Sum and/or the Contract Time to be adjusted according to the terms of this **Section 7.3**.

732. A Field Work Directive shall be used in the absence of total agreement on the terms of a Change Order. WEBB COUNTY shall issue a Field Work Directive to Contractor with a defined Not-To-Exceed dollar amount for the scope of Work defined.

733. Upon receipt of a Field Work Directive, Contractor promptly shall proceed with the change in the Work involved and, in writing, advise WEBB COUNTY of the Contractor's agreement or disagreement with the method, if any, provided in the Field Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

734. If the Field Work Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as applicable:

7.3.4.1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.4.2. prices, including unit prices, stated in the Contract Documents or subsequently agreed upon;

7.3.4.3. cost to be determined in a manner agreed upon by WEBB COUNTY and Contractor and a mutually acceptable fixed or percentage fee; or

7.3.4.4. as provided in **Section 7.3.6** herein.

735. If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall initially be determined by Design Consultant on the basis of reasonable costs and savings attributable to the change including, in case of an increase in the Contract Sum, as applicable, a reasonable allowance for overhead and profit. In such case, and also under **Section 7.3.4.3** herein, Contractor shall keep and present, in such form as WEBB COUNTY may prescribe, an itemized and detailed accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this **Section 7.3.5** shall be limited to the following:

7.3.5.1. costs of all labor, including social security, and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;

7.3.5.2. costs of all materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;

7.3.5.3. rental costs of all machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;

7.3.5.4. expenses incurred in accordance with Contractor's standard personnel policy for travel approved in writing by WEBB COUNTY in advance;

7.3.5.5. costs of premiums for all bonds and insurance, permit fees and allowable sales, use or similar taxes related to the Work;

7.3.5.6. all additional costs of supervision and field office personnel directly attributable to the change; and

7.3.5.7. all payments made by the Contractor to Subcontractors.

736. The amount of credit to be allowed by Contractor to WEBB COUNTY for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost of the deleted or change Work, plus Contractor's allocated percent for profit and overhead, as confirmed by Design Consultant, subject to



any equitable adjustment recommended by Design Consultant and approved by WEBB COUNTY. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

737. If WEBB COUNTY and Contractor agree with the determination made by Design Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

738. If WEBB COUNTY and Contractor cannot reach an agreement on either an adjustment on the Contract Sum and Contract Time, pursuant to an issued Field Work Directive, WEBB COUNTY and Contractor shall execute a Change Order for the adjustment on the Contract Sum or Contract Time, if any, the Parties do agree upon for the Work performed and Contractor reserves the right to file a Claim for any disagreements in Contract Sum or Contract Time not addressed in the Change Order, pursuant to **Section 4.4** herein. If WEBB COUNTY and Contractor cannot agree on both the adjustment in the Contract Sum and the Contract Time associated with an issued Field Work Directive, WEBB COUNTY unilaterally shall file a Change Order listing WEBB COUNTY's adjustment in the Contract Sum and/or Contract Time and Contractor reserves the right to file a Claim for payment and/or time, pursuant to **Section 4.4** herein.

#### 7.4. MINOR CHANGES TO THE WORK

WEBB COUNTY or Design Consultant both shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on WEBB COUNTY and Contractor. Contractor promptly shall carry out such written orders and record such changes in the As-Built drawings.

#### 7.5. TIME REQUIRED TO PROCESS CHANGE ORDERS

751. All responses by Contractor to proposal requests from WEBB COUNTY or Design Consultant shall be accompanied by a complete itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow WEBB COUNTY and Design Consultant a minimum of thirty (30) calendar days after receipt by WEBB COUNTY to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of Contractor's responses to proposal requests shall include a statement that the cost and additional time described and requested in Contractor's response represents the complete, total and final cost and additional Contract Time associated with the extra work, change,

addition to, omission, deviation, substitution or other grounds for seeking extra compensation or additional time under the Contract Documents, without reservation or further recourse.

752. All Change Orders require written approval by either WEBB COUNTY or WEBB COUNTY COMMISSIONERS COURT. The approval process requires a minimum of forty-five (45) calendar days after submission to WEBB COUNTY in final form with all supporting data. Receipt of a submission by WEBB COUNTY does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal shall be authorized by WEBB COUNTY or WEBB COUNTY COMMISSIONERS COURT Resolution or Administrative Action. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM SHALL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, Contractor shall proceed with the work under a pending Change Order only if directed in writing to do so by WEBB COUNTY.

#### ARTICLE VIII. TIME

##### 8.1. PROGRESS AND COMPLETION

- 8.1.1. TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE CONTRACT. By executing the Contract, Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- 8.1.2. Contractor shall proceed with the Work expeditiously using adequate forces and shall achieve Substantial Completion within the Contract Time.
- 8.1.3. For Projects not affecting WEBB COUNTY traffic, a determination made solely by WEBB COUNTY on a project-by-project basis, and a Working Day, as defined in **Section 1.1.1** herein, is measured from sunrise to sundown Monday through Friday, nothing in this **Article VIII** shall be construed as prohibiting Contractor from working on Saturdays if it so desires and giving WEBB COUNTY at least the prerequisite forty-eight (48) hours written notice of intent to perform Work on Saturday, Sunday and holidays so that WEBB COUNTY's representative may be scheduled to observe/inspect said Work and only if Contractor has performed work on the Project during the same week of the requested Saturday, Sunday or holiday.
- 8.1.4. On Projects affecting WEBB COUNTY traffic, a determination made solely by WEBB COUNTY on a project-by-project basis, Contractor shall work sunrise to sundown Monday through Saturday.

##### 8.2. DELAYS AND EXTENSIONS OF TIME

- 82.1. Neither WEBB COUNTY nor Contractor, except as provided for in this **Section 8.2**, shall be liable to the other for any delay to Contractor's Work by reason of fire, act of God, riot, strike or any other cause beyond WEBB COUNTY's control. Should any of these listed factors delay the Work's critical path, as evidenced by a Time Impact Analysis developed by Contractor and verified by Design Consultant, Program Manager and WEBB COUNTY, Contractor shall receive an extension of the Contract Times equal to the delay if a written claim is made within five (5) calendar days of the delaying event and granted by WEBB COUNTY. Under no circumstances shall WEBB COUNTY be liable to pay Contractor any compensation for such delays. Note that any request for an extension of time due to delays or disruption caused by unusually severe weather are addressed in **Section 4.3.6.2** herein.
- 82.2. Should Contractor be delayed solely by the act, negligence or default of WEBB COUNTY or Design Consultant, and should any of these factors delay the Project's critical path, as evidenced by a Time Impact Analysis developed by Contractor and verified by Design Consultant, Program Manager and WEBB COUNTY, Contractor shall receive an extension of the Contract Time equal to the verified delay or portion thereof if a written claim is made within five (5) calendar days of the act, negligence or default of WEBB COUNTY or Design Consultant and granted by WEBB COUNTY. In addition, Contractor, upon timely notice to WEBB COUNTY, with substantiation by WEBB COUNTY and Design Consultant and upon approval of WEBB COUNTY, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs incurred by Contractor to administer its Work and does not include costs associated for any tier of Subcontractor or supplier to administer their Work. Compensation for Subcontractor's and supplier's compensable delay affecting the Project critical path shall be separate and apart from the per diem cost due and payable to the Contractor) for the particular Project delayed and for the period of the critical path delay attributable to a WEBB COUNTY caused event. In no event shall Contractor be entitled to home office or other off-site expenses or damages.
- 82.3. Claims relating to time shall be made in accordance with applicable provisions of **Section 4.3** herein.
- 82.4. This Contract does not permit the recovery of damages by Contractor for delay, disruption or acceleration, other than those described in **Section 8.2.2** herein, as provided under **Section 4.3.11(3)** herein and those justified by a Time Impact Analysis. Contractor agrees that it fully shall be compensated for all delays solely by an extension of non-compensatory time or as contemplated in **Section 8.2.2** herein.

## ARTICLE IX. PAYMENTS AND COMPLETION

### 9.1. CONTRACT SUM

The Contract Sum is stated in the Contract and, including authorized adjustments, is the total maximum not-to-exceed amount payable by WEBB COUNTY to Contractor for performance of the Work under the Contract Documents. Contractor accepts and agrees that all payments pursuant to this Contract are subject to the availability and appropriation of funds by the WEBB COUNTY COMMISSIONERS COURT. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any Party to this Contract.

## 92. SCHEDULE OF VALUES

92.1. A Schedule of Values for all of the Work shall be submitted by Contractor and shall include quantities and prices of items which, when added together, equal a contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Where applicable, overhead and profit shall be included as a separate line item.

92.2. Before the first Application for Payment, Contractor shall submit to WEBB COUNTY and Design Consultant a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as WEBB COUNTY and Design Consultant may require. This schedule, unless objected to by Design Consultant or WEBB COUNTY, shall be used as a basis for reviewing Contractor's Applications for Payment.

## 93. APPLICATIONS FOR PAYMENT

93.1. Contractor shall submit Applications for Payment to WEBB COUNTY electronically, at minimum, every thirty (30) days throughout the duration of the Project. Contractor electronically shall attach to its Application for Payment all data substantiating Contractor's right to payment as WEBB COUNTY or Design Consultant may require, such as copies of requisitions from Subcontractors and material suppliers reflecting retainage, if provided for in the Contract Documents, and reflecting a deduction for Liquidated Damages, if applicable. Applications for Payment shall not include requests for payment for portions of the Work which Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom Contractor intends to pay.

93.2. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by WEBB COUNTY. If approved in advance in writing by WEBB COUNTY, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by WEBB COUNTY. Payment for materials and equipment stored on or off the Site shall be conditioned upon

compliance by Contractor with procedures reasonably satisfactory to WEBB COUNTY to establish WEBB COUNTY's title to such materials and equipment or otherwise protect WEBB COUNTY's interest. Contractor solely shall be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

933. Contractor warrants that, upon submittal of an Application for Payment, all Work for which payment previously has been received from WEBB COUNTY shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD WEBB COUNTY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY WEBB COUNTY TO CONTRACTOR.**

934. By submission of an Application for Payment, Contractor certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all Subcontractors and Contractor's material men have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by WEBB COUNTY to Contractor; provided if any of the foregoing is not true and cannot be certified, Contractor shall revise the certificate as appropriate and identify all exceptions to the requested certifications.

#### 94. PAY APPLICATION APPROVAL

94.1. Design Consultant shall, within five (5) business days after the electronic receipt of Contractor's Application for Payment either approve the Application for Payment or reject the Application for Payment and state on the electronic notification to Contractor and WEBB COUNTY the Design Consultant's reasons for withholding approval, as provided in **Section 9.5.1** herein.

94.2. The certification of an Application for Payment shall constitute a representation by Design Consultant to WEBB COUNTY, based on Design Consultant's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of Design Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations

are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to any specific qualifications expressed by Design Consultant. The issuance of a Certificate for Payment further shall constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation Design Consultant has:

- (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
- (2) reviewed construction means, methods, techniques, sequences or procedures;
- (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by WEBB COUNTY to substantiate Contractor's right to payment; or
- (4) made an examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

## 95. DECISIONS TO REJECT APPLICATION FOR PAYMENT

95.1. The Application for Payment may be rejected to protect WEBB COUNTY for any of the following reasons:

- 9.5.1.1. Work not performed or defective;
- 9.5.1.2. third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder unless security acceptable to WEBB COUNTY is provided by Contractor;
- 9.5.1.3. failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- 9.5.1.4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum and Contractor has failed to provide WEBB COUNTY adequate assurance of its continued performance within a reasonable time after demand;
- 9.5.1.5. damage to WEBB COUNTY or another contractor;
- 9.5.1.6. reasonable evidence that the Work shall not be completed within the Contract Time, and that the unpaid balance would not be

adequate to cover actual or Liquidated Damages for the anticipated delay;

9.5.1.7. persistent failure by Contractor to carry out the Work in accordance with the Contract Documents;

9.5.1.8. the applicable Liquidated Damages were not included in the Application for Payment;

9.5.1.9. billing for unapproved/unverified materials stored off Site; or

9.5.1.10. a current schedule update has not been submitted by Contractor.

952. WEBB COUNTY shall not be deemed in default by reason of rejecting Application for Payment as provided for in **Section 9.5.1** herein.

#### 9.6. PROGRESS PAYMENTS

961. After the final approval of the Application for Payment, WEBB COUNTY may make payment in the manner and within the time provided in the Contract Documents.

962. During the latter part of each month, as the Work progresses on all WEBB COUNTY Contracts regardless of Contract Sum, WEBB COUNTY and Contractor shall determine the cost of the labor and materials incorporated into the Work during that month and actual invoiced cost of Contractor-acquired materials stored on the Project Site, and/or within off-site storage facilities either owned or leased by Contractor. Upon receipt of a complete and mathematically accurate Application for Payment from Contractor, WEBB COUNTY shall make payments, in accordance with **Article IX** herein, to Contractor within thirty (30) calendar days. Installments shall be paid to Contractor at the rate of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of WEBB COUNTY receipt of a complete and mathematically accurate Application for Payment from the Contractor, and the retainage held until Final Completion shall be five percent (5%).

963. WEBB COUNTY's payment of installments shall not, in any way, be deemed to be a final acceptance by WEBB COUNTY of any part of the Work, shall not prejudice WEBB COUNTY in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work herein provided.

964. Contractor shall, within ten (10) calendar days following receipt of payment from WEBB COUNTY, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide WEBB COUNTY with written evidence of such payment. Contractor's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract,

unless Contractor is able to demonstrate to WEBB COUNTY bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its Subcontractors as are applicable to Contractor hereunder, and if WEBB COUNTY so requests, shall provide copies of such Subcontractor payments to WEBB COUNTY. If Contractor has failed to make payment promptly to Contractor's Subcontractors or for materials or labor used in the Work for which WEBB COUNTY has made payment to the Contractor, WEBB COUNTY shall be entitled to withhold payment to Contractor to the extent necessary to protect WEBB COUNTY.

- 9.65. WEBB COUNTY and/or Design Consultant shall, if practicable and upon request, furnish to Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by WEBB COUNTY and Design Consultant on account of portions of the Work done by such Subcontractor.
- 9.66. Neither WEBB COUNTY nor Design Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.
- 9.67. Payments to material suppliers shall be treated in a manner similar to that provided in **Section 9.6.2**, **Section 9.6.3** and **Section 9.6.4** herein regarding Subcontractors.
- 9.68. A Certificate for Payment, a progress payment or a partial or entire use or occupancy of the Project by WEBB COUNTY shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.
- 9.69. Contractor shall, as a condition precedent to any obligation of WEBB COUNTY under this Contract, provide to WEBB COUNTY payment and performance bonds in the full penal amount of the Contract, in accordance with Texas Government Code Chapter 2253.

## 9.7. SUBSTANTIAL COMPLETION

- 9.7.1. Substantial Completion is defined as the stage in the progress of the Work when the Work – or a designated portion thereof, which WEBB COUNTY agrees to accept separately – sufficiently is complete, in accordance with the Contract Documents, so WEBB COUNTY may occupy or utilize the Work or a designated portion thereof for its intended use. In the event Substantial Completion is not achieved by the designated date, or the date extended by issued and accepted Change Order(s), WEBB COUNTY may withhold payment of sums necessary to pay the estimated Liquidated Damages due WEBB COUNTY. WEBB COUNTY shall be entitled, at any time, to deduct out of any sums due to Contractor any or all Liquidated Damages due WEBB COUNTY in accordance with the Contract between WEBB COUNTY and



Contractor.

- 9.7.2. When Contractor considers that the Work, or a portion thereof which WEBB COUNTY agrees to accept separately, is Substantially Complete, Contractor shall prepare and submit to WEBB COUNTY and Design Consultant a preliminary comprehensive list of items to be completed or corrected prior to Final Completion and final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- 9.7.3. Upon receipt of Contractor's list of items to be completed or corrected, WEBB COUNTY and Design Consultant shall make a Site inspection to determine whether the Work or designated portion thereof is Substantially Complete. If WEBB COUNTY's or Design Consultant's inspection discloses any item, whether or not it was included on Contractor's list of items to be completed or corrected, which is not sufficiently complete or correct in accordance with the Contract Documents so that WEBB COUNTY may occupy or utilize the Work or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by WEBB COUNTY or Design Consultant. In such case, Contractor then shall submit a request for another inspection by WEBB COUNTY and Design Consultant to determine Substantial Completion and Contractor shall be responsible for all costs incurred and associated with re- inspection.
- 9.7.4. When the Work – or the designated portion thereof which WEBB COUNTY agrees to accept separately – is Substantially Complete, Design Consultant or WEBB COUNTY shall prepare a Certificate of Substantial Completion (Vertical Projects) or a Letter of Conditional Approval (Horizontal Projects) which shall:
- (1) establish the date of Substantial Completion (which shall be the date on which the Work met the requirements under the Contract Documents for Substantial Completion);
  - (2) establish responsibilities of WEBB COUNTY and Contractor, as agreed to by WEBB COUNTY and Contractor, for security, maintenance, heat, utilities, damage to the Work and insurance; and
  - (3) confirm the time limit by which Contractor shall complete all items on the list accompanying the Certificate.

Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or the designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion.

9.8. PARTIAL OCCUPANCY OR USE

981. WEBB COUNTY may occupy or use any completed or partially completed portion of the Work at any stage of the Work when such partially completed portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer, as required under **Section 11.2.5** herein and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided WEBB COUNTY and Contractor have accepted in writing the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion of the Work to be Substantially Complete, Contractor shall prepare and submit a list of items to be completed or corrected prior to Final Completion and final payment and submit such list to WEBB COUNTY and Design Consultant, as provided under **Section 9.8.2** herein. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between WEBB COUNTY and Contractor or, if no agreement is reached, by the decision of Design Consultant.
982. Immediately prior to such partial occupancy or use, WEBB COUNTY, Contractor and Design Consultant collectively shall inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
983. Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.
984. Upon such partial occupancy or use, and upon Substantial Completion, WEBB COUNTY may assume responsibility for maintenance, security and insuring that portion of the Work that it has put into use.
985. Partial occupancy or use by WEBB COUNTY does not constitute substantial completion and does not start any warranty period(s).

9.9. FINAL COMPLETION AND FINAL PAYMENT

991. When all of the Work finally is completed and ready for final inspection, Contractor shall notify WEBB COUNTY and Design Consultant thereof in writing. Thereupon, WEBB COUNTY and Design Consultant shall make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the final Application for Payment may be submitted. If WEBB COUNTY and Design Consultant are unable to approve the final Application for Payment for

reasons for which Contractor is responsible and WEBB COUNTY and Design Consultant are required to repeat a final inspection of the Work, Contractor shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by WEBB COUNTY from the Contractor's retainage.

992. Contractor shall not be entitled to payment of retainage unless and until it submits to WEBB COUNTY its affidavit that the payrolls, invoices for materials and equipment, and other liabilities, to include Liquidated Damages, connected with the Work for which WEBB COUNTY or WEBB COUNTY's property might be responsible fully have been paid or otherwise satisfied or shall be paid from final payment; releases and waivers of liens from all Subcontractors of Contractor and of any and all other parties required by Design Consultant or WEBB COUNTY that either are unconditional or conditional on receipt of final payment; Certificates of insurance showing continuation of required insurance coverage; such other documents as WEBB COUNTY may request; and consent of Surety to final payment. A Retainage Checklist shall be provided by WEBB COUNTY to Contractor upon request.

993. If, after Substantial Completion of the Work, Final Completion of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, and Design Consultant so confirms, WEBB COUNTY shall, upon application by Contractor and certification by Design Consultant and without terminating the Contract, make payment of the balance due Contractor for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Design Consultant, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

994. Request for final payment by Contractor shall constitute a waiver of all claims against WEBB COUNTY, except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

#### 9.10. ADDITIONAL INSPECTIONS

In addition to any Liquidated Damages accrued by and payable to WEBB COUNTY by Contractor, WEBB COUNTY shall be entitled to deduct from the Contract Sum amounts due to Contractor by WEBB COUNTY to compensate Design Consultant for any additional inspections or services provided by Design Consultant, provided Design Consultant undertook these additional inspections or services due to the fault or negligence of Contractor if:

- (1) Design Consultant is required to make more than one inspection to determine if Substantial Completion has been achieved by Contractor;
- (2) Design Consultant is required to make more than one inspection to determine if Final Completion has been achieved by Contractor; or
- (3) the Work is not substantially complete within thirty (30) calendar days after the date established for the Work's Substantial Completion, as stated in the Contract Documents.

## **ARTICLE X. PROTECTION OF PERSONS AND PROPERTY**

### **10.1. SAFETY PRECAUTIONS AND PROGRAMS**

- 10.1.1. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall develop a safety program applicable to each job site and to the Work to be done and enforce such program at all times. Further, Contractor shall comply with all applicable laws and regulations including, but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Contractor employees. WEBB COUNTY shall have the right, but not the obligation, to inspect and verify Contractor's compliance with Contractor's responsibility for protecting the safety and health of its employees and Subcontractor.
- 10.1.2. Contractor shall notify WEBB COUNTY immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities including, but not limited to, copies of all reports and other documents filed or provided to Contractor's insurers and the State of Texas in connection with such injuries or fatalities.
- 10.1.3. Contractor has adopted or shall adopt its own policy to assure a drug and alcohol free work place while performing the Work. Contractor's employees, agents, and Subcontractors shall not perform any service for WEBB COUNTY while under the influence of alcohol or any controlled substance. Contractor, its employees, agents and Subcontractors shall not use, possess, distribute or sell illegal, illicit and/or prescribed controlled drugs or drug paraphernalia or misuse legitimate prescription drugs while on Site or performing the Work. Contractor, its employees, agents and Subcontractors shall not use, possess, distribute or sell alcoholic beverages while performing the Work or while on Site or performing the Work. Contractor shall remove any of its employees or Subcontractor employees from performing the Work or from the Site any time there is suspicion of alcohol and/or drug use, possession or impairment involving such employee and at any time an incident occurs where drug or alcohol use could have been a contributing factor. WEBB COUNTY has the right to require Contractor to remove employees or Subcontractor employees from performing the Work or from the Site any time cause exists to suspect

alcohol or drug use. In such cases, Contractor's or Subcontractor's employees only may be considered for return to work after Contractor certifies, as a result of a for-cause test conducted immediately following a removal, said employee was in compliance with this Contract. Contractor shall not employ any individual, or shall not accept any Subcontractor employees, to perform the Work who either refuses to take or tests positive in any alcohol or drug test.

- 10.14. Contractor shall comply with all applicable federal, state and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). The presence of any firearms or other lethal weapons by any person is prohibited on the Project site, regardless of whether there exists a valid permit for carrying a weapon.
- 10.15. Both WEBB COUNTY and Contractor agree that these safety and health terms are of the highest importance and that a breach or violation of any of the terms of this **Section X** by Contractor or a Subcontractor shall be a material and substantial breach of this Contract. In the event that WEBB COUNTY shall determine that Contractor has breached or violated the terms of this Section, then WEBB COUNTY shall determine, immediately upon written notice to Contractor, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until WEBB COUNTY is satisfied that the safety provisions hereof shall not be breached or violated thereafter. If WEBB COUNTY terminates the Contract as a result of such breach or violation, WEBB COUNTY and Contractor shall complete their obligations hereunder to one another in accordance with **Article XIII** herein.
- 10.16. Nothing contained in this **Article X** shall be interpreted as creating or altering the legal duty of WEBB COUNTY to Contractor or to Contractor's agents, employees, Subcontractors or third parties, or altering the status of Contractor as an independent contractor.
- 10.17. Notwithstanding either of the above provisions, or whether WEBB COUNTY exercises its rights set forth herein, WEBB COUNTY neither warrants nor represents to Contractor, Contractor's employees or agents, any Subcontractors or any other third party that Contractor's safety policy meets the requirements of any applicable law, code, rule or regulation, nor does WEBB COUNTY warrant that the proper enforcement of Contractor's policy shall insure that no accidents or injuries shall occur. In addition, any action by WEBB COUNTY under these provisions in no way diminishes any of Contractor's obligations under applicable law or the contract documents.

## 10.2. SAFETY OF PERSONS AND PROPERTY

1021. Contractor shall take reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to:

- 10.2.1.1. employees performing the Work and other persons who may be affected thereby;
  - 10.2.1.2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or Contractor's Subcontractors or Sub-Subcontractors;
  - 10.2.1.3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of Construction; and
  - 10.2.1.4. the contents of a building or structure, when Contractor is working in, on or around an existing/operating WEBB COUNTY facility.
1022. Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
1023. Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying WEBB COUNTY and users of adjacent sites and utilities.
1024. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, Contractor shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel. Prior to the use of any explosives, Contractor shall submit a written blasting plan, shall obtain WEBB COUNTY's approval and shall comply with WEBB COUNTY's requirements for such use.
1025. Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to WEBB COUNTY and Design Consultant.
1026. Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
1027. Notwithstanding the delivery of a survey or other documents by WEBB COUNTY, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes or pipelines on the property. Contractor acknowledges and accepts that the location of

underground utilities (both public and private) reflected on any WEBB COUNTY provided Plans are not guaranteed and may not be completely accurate. Contractor shall locate and verify any and all utilities and associated service lines prior to beginning any Work. Contractor shall be responsible for and shall repair, at Contractor's own expense, any damage done to lines, cables, pipes and pipelines identified or not identified to Contractor.

### 10.3. EMERGENCIES

103.1. In an emergency affecting safety of persons or property, Contractor shall exercise its best efforts to act to prevent or minimize threatened damage, injury or loss. Additional compensation or extension of time claimed by Contractor on account of an emergency shall be determined, as provided in **Section 4.3** and **Article VII** herein.

103.2. If Contractor causes damage resulting in an issue of safety and/or security to a property WEBB COUNTY, Contractor immediately shall repair any damage caused. If Contractor does not or shall not act immediately to repair the damage caused by Contractor to eliminate the resulting safety and/or security issue(s), WEBB COUNTY shall act to repair the damage caused and deduct all costs associated with the repair from any money due Contractor.

### 10.4. PUBLIC CONVENIENCE AND SAFETY

104.1. Contractor shall place materials stored at the Project site and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by WEBB COUNTY. Sidewalks or streets shall not be obstructed, except by special permission of WEBB COUNTY. Materials excavated and construction materials or plants used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances and fire alarm or police call boxes in the vicinity.

104.2. WEBB COUNTY reserves the right to remedy any neglect on the part of Contractor, in regard to public convenience and safety, which may come to WEBB COUNTY's attention after twenty-four (24) hours notice in writing to Contractor. In case of an emergency, WEBB COUNTY shall have the right immediately to remedy any neglect without notice. In either case, the cost of any work done by or for WEBB COUNTY to remedy Contractor's neglect shall be deducted by WEBB COUNTY from Contractor's Contract Sum. Contractor shall notify WEBB COUNTY, Design Consultant when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be given at least forty- eight (48) hours in advance. WEBB COUNTY reserves the right to postpone and/or prohibit any closure or obstruction of any streets or thoroughfares, to the extent necessary

for the safety and benefit of the traveling public. Contractor shall, when directed by WEBB COUNTY or Design Consultant, keep any street or streets in condition for unobstructed use. When Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

1043. Contractor shall limit airborne dust and debris throughout the Project site and its duration. Contractor shall apply the necessary amounts of water or other appropriate substance required to maintain sufficient moisture content for dust control. For WEBB COUNTY horizontal projects, Contractor shall apply appropriate amounts of water or other appropriate substance to the base on streets under construction and on detours required to maintain sufficient moisture control in the surface layer for dust control.

#### 10.5. BARRICADES, LIGHTS AND WATCHMEN

If the Work is carried on, in or adjacent to any street, alley or public place, Contractor shall, at Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, provide sufficient watchmen and take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that shall be visible at night, and shall be illuminated by lights as required under WEBB COUNTY's or TxDOT's Barricades Specifications. The term "lights," as used in this **Section 10.5**, shall mean flares, flashers or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices also shall be erected to keep vehicles from being driven on or into any Work under construction. Contractor shall be held responsible for all damage to the Work due to failure of barricades, signs, lights and/or watchmen necessary to protect the Work. Whenever evidence is found of such damage, WEBB COUNTY or Design Consultant may order the damaged portion immediately removed and replaced by Contractor at Contractor's sole cost and expense. Contractor's responsibility for maintenance of barricades, signs, lights, and for providing watchmen, as required under this **Section 10.5**, shall not cease until the Project has been finally accepted by WEBB COUNTY.

#### 10.6. PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED

In case it is necessary for Contractor to change or move the property of WEBB COUNTY or of any telecommunications or public utility, such property shall not be touched, removed or interfered with until ordered to do so by WEBB COUNTY. WEBB COUNTY reserves the right to grant any public or private utility personnel the authority to enter upon the Project site for the purpose of making such changes or repairs to their property that may become necessary during the performance of the Work. WEBB COUNTY reserves the right of entry upon the Project site at any time and for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures and for making other repairs, changes, or extensions to any of WEBB COUNTY's property. WEBB COUNTY's actions shall conform to Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to



WEBB COUNTY by Contractor.

10.7. TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

When existing storm sewers or drains have to be taken up or removed, Contractor shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Contractor also shall provide for all storm sewage and drainage which shall be received from these storm drains and sewers. For this purpose, Contractor shall provide and maintain, at Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. Contractor shall, at Contractor's own expense, construct such troughs, pipes or other structures that may be necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and are in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by Design Consultant. All storm water and sewage shall be disposed of in a satisfactory and lawful manner so that no nuisance is created and that the Work under construction shall be adequately protected.

10.8. ARRANGEMENT AND CHARGE FOR WATER, ELECTRICAL OR WIRELESS ACCESS FOR THE PROJECT

1081. When Contractor desires to use water in connection with the Work, Contractor shall make complete and satisfactory arrangements with the appropriate water utility and shall be responsible for the cost of the water Contractor uses.

1082. Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the appropriate retail electric provider, in the event that separately metered electrical connections are required for the Project. Contractor shall pay for all electricity COUNTY used in the performance of the Work through separate metered electrical connections obtained by Contractor through a retail electric provider.

1083. If Contractor elects or is required by WEBB COUNTY to place and operate out of a construction trailer or office on the Project site, for which all related costs shall be borne by Contractor, Contractor shall provide for an electronic device to exchange data wirelessly via a local area computer network, to include high-speed internet connections (commonly known as "Wi Fi access"), for WEBB COUNTY personnel's use while on the Project site for the duration of the Project.

10.9. USE OF FIRE HYDRANTS

Contractor, Subcontractors and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to or connect anything with any fire hydrant, stop valve or stop cock, or tap any water main unless duly authorized in writing to do so by the utility's owner.

## 10.10. ENVIRONMENTAL COMPLIANCE

- 10.10.1. Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with any and all applicable federal, state or local laws, rules, regulations, ordinances and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances or rules of common law including, but not limited to, any judicial or administrative order, consent decree or judgment affecting the Project.
- 10.10.2. In the event Contractor encounters on the Project Site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and the removal of such materials is not a part of the scope of Work required under the Contract Documents, Contractor immediately shall stop Work in the affected area and report in writing the facts of such encounter to WEBB COUNTY and Design Consultant. Work in the affected area shall not thereafter be resumed except by written order of WEBB COUNTY and written consent of Contractor, unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. Unless removal of such materials is a part of the scope of Work required under the Contract Documents, WEBB COUNTY shall remediate the Hazardous Substance with a separate contractor or through a Change Order with Contractor. If the Hazardous Substance exists in the affected area due to the fault or negligence of Contractor or any of its Subcontractors, Contractor shall be responsible for remediating the condition at the sole expense of Contractor. If applicable, such remediation shall be in accordance with Contractor's Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by WEBB COUNTY only if the Project critical path is affected and Contractor is not the source of the Hazardous Substance. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of **Section 4.3** and **Article VIII** herein.
- 10.10.3. Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation and disposal of any Hazardous Substance brought into or onto the site by Contractor or any Subcontractor or Contractor's Supplier. Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation and disposal of the Hazardous Substance and shall, prior

to undertaking any abatement, cleanup, control, removal, remediation and/or disposal, notify WEBB COUNTY and Design Consultant so that they may observe the activities; provided, however, that it shall be Contractor's sole responsibility to comply with all applicable laws, rules, regulations or ordinances governing said activities.

## ARTICLE XI. INSURANCE AND BONDS

### 11.1. CONTRACTOR'S LIABILITY INSURANCE

- 11.1.1. Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Liability Insurance to WEBB COUNTY, which shall be clearly labeled "Webb County HVA Upgrades to Casa Ortiz and Justice of the Peace Precinct 2, Place 2 Buildings Project" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. WEBB COUNTY shall not accept a Memorandum of Insurance or Binder as proof of insurance. The Certificate(s) shall be signed by the Authorized Representative of the insurance carrier and shall include the agent's original signature and telephone number. The Certificate(s) shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to WEBB COUNTY. WEBB COUNTY shall have no duty to pay or perform its obligations under this Contract until such Certificate(s) and endorsements have been received and approved by WEBB COUNTY. No officer or employee of WEBB COUNTY, other than the WEBB COUNTY Commissioners Court, shall have authority to waive this requirement.
- 11.1.2. WEBB COUNTY reserves the right to review the insurance requirements of this **Article XI** during the effective period of this Contract and to modify insurance coverages and limits when deemed necessary and prudent by the WEBB COUNTY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will WEBB COUNTY allow modification whereby WEBB COUNTY may incur increased risk.
- 11.1.3. Contractor's financial integrity is of interest to WEBB COUNTY; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by WEBB COUNTY, Contractor shall obtain and maintain in full force and effect, for the duration of this Contract and at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000.00 per employee per accident/\$1,000,000.00 disease ea. employee/ \$1,000,000.00 disease policy limit
3. Commercial General Liability Insurance to include coverage for the following:  a. Premises/Operations   b. Products/Completed Operations (to be maintained and in effect for no less than two years subsequent to the completion of the project)  c. Personal/Advertising Injury  *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground	For <u>Bodily Injury</u> and <u>Property</u> <u>Damage</u> of:  \$1,000,000.00 per occurrence; \$2,000,000.00 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$2,000,000.00 Products/Completed Operations Aggregate  N/A
4. Business Automobile Liability:  a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property</u> <u>Damage</u> of \$1,000,000.00 per occurrence

<p>5. Umbrella Liability – To have as its underlying:  d. General liability, including products/completed operations  e. Automobile liability  f. Employers liability</p>	<p>\$4,000,000.00</p>
<p>6. Contractor’s Pollution-Per Occurrence</p>	<p>\$1,000,000 per Claim;  \$3,000,000 Aggregate</p>
<p>7. *Professional Liability (Claims-made basis)  To be maintained and in effect for no less than two years subsequent to the completion of the professional service.</p>	<p>\$1,000,000.00 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any wrongful act, malpractice, error, or omission in professional services.</p>
<p>8. Builder’s Risk</p>	<p>All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.</p>
<p>*if applicable</p>	

11.14. Contractor agrees to require, by written contract, all Subcontractors providing goods or services pursuant to performance on the Project obtain the same categories of insurance coverage required of Contractor herein and provide a Certificate of Liability Insurance and endorsement that names Contractor and WEBB COUNTY as additional insureds. Policy limits of the coverages carried by Subcontractors shall be determined as a business decision of Contractor. Contractor shall provide WEBB COUNTY with said Certificate and endorsement prior to the commencement of any work by the Subcontractor. This Subcontractor insurance provision may be modified by the WEBB COUNTY’s Risk Manager, without subsequent WEBB COUNTY COMMISSIONERS COURT approval, when deemed necessary and prudent, based upon changes in

statutory law, court decisions, or circumstances surrounding this Contract. Such insurance coverage modification may be enacted by letter signed by the WEBB COUNTY's Risk Manager, which shall become a part of this Contract for all purposes.

- 11.15. As they apply to the limits required by WEBB COUNTY, WEBB COUNTY shall be entitled, upon request and without expense, to receive certified copies of all insurance policies, declaration pages and all required endorsements associated with this Work. Contractor shall be required to comply with any such requests and shall submit requested documents to WEBB COUNTY at the address provided below within ten (10) calendar days. Contractor shall pay any and all costs incurred resulting from provision of said documents to WEBB COUNTY.

WEBB COUNTY  
Attn: Risk Manager  
1110 Washington St. Suite 204  
Laredo, Texas 78040

- 11.16. Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name WEBB COUNTY, its officers, officials, employees, volunteers, and elected representatives as additional insureds on a primary and non-contributory basis by endorsement, with respect to operations and activities of, or on behalf of, the named insured performing under this Contract with WEBB COUNTY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement reflecting the "other insurance" clause shall not apply to the WEBB COUNTY where WEBB COUNTY is an additional insured shown on the policy;
- All required policies, including but not limited to Workers' compensation, employers' liability, general liability and automobile liability policies, shall provide a waiver of subrogation in favor of WEBB COUNTY.
- Provide thirty (30) calendar days advance written notice directly to WEBB COUNTY, at the address cited above, of any suspension, cancellation, material change or non-renewal in coverage of Contractor's insurance policy/policies associated with this Work and not less than thirty (30) calendar days in advance notice for Contractor's nonpayment of premium(s).

- 11.17. Within five (5) calendar days of a suspension, cancellation, material change or non-renewal of insurance coverage associated with this Work, Contractor shall

provide a replacement Certificate(s) of Insurance and applicable endorsement(s) to WEBB COUNTY. WEBB COUNTY shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.

- 11.1.8. In addition to any other remedies WEBB COUNTY may have upon Contractor's failure to provide and maintain any insurance and/or policy endorsements to the extent and within the time herein required, WEBB COUNTY shall have the right to order Contractor to stop work hereunder and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the insurance requirements hereof.
- 11.1.9. Nothing contained herein shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its Subcontractors' performance of the Work covered under this Contract.
- 11.1.10. Contractor accepts and agrees Contractor's insurance shall be deemed primary and non-contributory, with respect to any insurance or self insurance carried by WEBB COUNTY, for liability arising out of Contractor's operations under this Contract.
- 11.1.12. Contractor understands, accepts and agrees the insurance required of Contractor by this Contract is in addition to and separate from any other obligation contained in this Contract and no claim or action by or on behalf of WEBB COUNTY shall be limited to insurance coverage provided.
- 11.1.13. Contractor and any of Contractor's Subcontractors are responsible for any and all damage to their own equipment and/or property.
- 11.1.14. Without limiting any of the other obligations or liabilities of Contractor under the Contract Documents, Contractor shall purchase and maintain, during the term of the Contract and at Contractor's own expense, the minimum liability insurance coverage described below with insurance companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to WEBB COUNTY. Contractor also shall require each Subcontractor performing work under the Contract, at Subcontractor's own expense, to maintain levels of insurance necessary and appropriate for the Work performed during the term of the Contract, said levels of insurance comply with all applicable laws. Subcontractor's liability insurance shall name Contractor, WEBB COUNTY and Design Consultant as additional insureds by using endorsement CG 20 26 or broader. Certificates of insurance complying with the requirements prescribed in **Section 11.1.3** herein shall show the existence of each policy, together with copies of all policy endorsements showing WEBB

COUNTY and Design Consultant as an additional insured, and shall be delivered to WEBB COUNTY before any Work is started. Contractor promptly shall furnish, upon the request of and without expense to WEBB COUNTY, a certified copy of each policy required, including all endorsements, which shall indicate:

- 11.1.15. Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to WEBB COUNTY; Employer's Liability Insurance of not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease for each employee and \$1,000,000.00 disease policy limit;
- 11.1.16. Commercial General Liability Insurance, Personal Injury Liability, Independent Contractor's Liability and Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (and/or Subcontractor's) liability for injury to or death of WEBB COUNTY's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000.00 per occurrence, \$2,000,000.00 annual general aggregate and \$2,000,000 Products and Completed Operations aggregate. WEBB COUNTY shall be named as additional insured by using endorsement CG 20 26 or broader. The general liability policy shall include coverage extended to apply to completed operations and XCU hazards. The Completed Operations coverage must be maintained for a minimum of two (2) years after final completion and acceptance of the Work, with evidence of same filed with WEBB COUNTY. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the Project in question.
- 11.1.17. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.
- 11.1.18. Five (5) calendar days prior to a suspension, cancellation material or non-renewal of any required line of insurance coverage, Contractor shall provide WEBB COUNTY a replacement certificate of insurance with all applicable endorsements included. WEBB COUNTY shall have the option to suspend Contractor.
- 11.1.19. If any insurance company providing insurance coverage(s) required under the Contract Documents for Contractor becomes insolvent or becomes the subject of any rehabilitation, conservatorship, liquidation or similar proceeding, Contractor immediately shall procure, upon first notice to Contractor or WEBB COUNTY of such occurrence and without cost to WEBB COUNTY, replacement insurance coverage before continuing the performance of the Work



at the Project. Any failure to provide such replacement insurance coverage shall constitute a material breach of the Contract.

11.2. PROPERTY INSURANCE

1121. As stated in **Section 11.1** Contractor shall obtain at its expense and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the Project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the Project involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, WEBB COUNTY shall be shown as a Joint Named Insured with respect to the Project. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be in the name of Contractor and naming WEBB COUNTY, Design Consultant and Subcontractors, as well as any Sub-Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

11.2.1.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

11.2.1.2 WEBB COUNTY is to be named as Loss Payee as respects any loss under applicable property insurance.

1122. BOILER AND MACHINERY INSURANCE. If applicable, WEBB COUNTY shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by WEBB COUNTY. This insurance shall include the interests of WEBB COUNTY, Contractor, Subcontractors and Sub-Subcontractors in the Work, and WEBB COUNTY and Contractor shall be named insureds.

1123. LOSS OF USE INSURANCE. WEBB COUNTY, at WEBB COUNTY's option, may purchase and maintain such insurance as shall insure WEBB COUNTY against loss of use of WEBB COUNTY's property due to fire or other hazards, however caused.

1124. Contractor shall provide to Design Consultant for delivery to WEBB COUNTY a Certificate of Insurance evidencing all property insurance policies procured under this Section 11.2 and all endorsements thereto, before any exposure to loss may occur.

1125. Partial occupancy or use in accordance with Section 9.8.1 herein shall not commence until the insurance company/companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. WEBB COUNTY and Contractor shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.
1126. Contractor shall take all necessary precautions to ensure no damage shall result from operations to private or public property. All damages shall be repaired or replaced by Contractor at no additional cost to WEBB COUNTY.

### 11.3. PERFORMANCE BONDS AND PAYMENT BONDS

- 11.3.1. Subject to the provisions of Section 11.3.2 herein, Contractor shall, with the execution and delivery of the Contract, furnish and file with WEBB COUNTY, in the amounts required in this Article XI, the Surety Bonds described in Section 11.3.1.1 and Section 11.3.1.2 herein, with said Surety Bonds in accordance with the provisions of Chapter 2253, Texas Government Code, as amended. Each Surety Bond shall be signed by Contractor, as the Principal, as well as by an established corporate surety bonding company as surety, meeting the requirements of Section 11.3.3 herein and approved by WEBB COUNTY. The Surety Bonds shall be accompanied by an appropriate Power-of-Authority clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

11.3.1.1. PERFORMANCE BOND. A good and sufficient Performance Bond in an amount equal to one hundred percent (100%) of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any extensions thereof, for the protection of WEBB COUNTY. This Performance Bond also shall provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final Completion or acceptance of the Work by WEBB COUNTY, or lesser or longer periods as otherwise may be designated in the Contract Documents.

11.3.1.2. PAYMENT BOND. A good and sufficient Payment Bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract, and for the use and protection of each claimant.

- 11.3.2. If the Contract Sum, including WEBB COUNTY-accepted Alternates and allowances, if any, is greater than \$100,000.00, a Payment Bond and a

Performance Bond equaling one hundred percent (100%) of the Contract Sum are mandatory and shall be provided by Contractor. If the Contract Sum is greater than \$50,000 but less than or equal to \$100,000, only a Payment Bond equaling one hundred percent (100%) of the Contract amount is mandatory; provided, however, Contractor also may elect to furnish a Performance Bond in the same amount if Contractor so chooses. If the Contract Sum is less than or equal to \$25,000, Contractor may elect not to provide Performance and Payment Bonds; provided, in such event, no money shall be paid by WEBB COUNTY to Contractor until Final Completion of all Work. If Contractor elects to provide the required Performance Bond and Payment Bond, the Contract Sum shall be payable to Contractor through progress payments in accordance with these General Conditions.

- 11.3.3. No surety shall be accepted by WEBB COUNTY that is in default, delinquent on any bonds or that is a party to any litigation against WEBB COUNTY. All bonds shall be made and executed on WEBB COUNTY's standard forms, shall be approved by WEBB COUNTY and shall be executed by not less than one (1) corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties and is otherwise acceptable to WEBB COUNTY. Each bond shall be executed by Contractor and the surety and shall specify that legal venue for enforcement of each bond exclusively shall lie in Webb County, Texas. Each surety shall designate an agent resident in Webb County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the suretyship.
- 11.3.4. The person or persons, partnership, company, firm, limited liability company, association, corporation or other business entity to whom the Contract is awarded shall, within ten (10) days after such award, sign the required Contract with WEBB COUNTY and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on WEBB COUNTY until:
1. it has been approved as to form by WEBB COUNTY's Attorney;
  2. it has been executed by WEBB COUNTY's County Judge;
  3. the Payment Bond and Performance Bond and evidence of the required insurance have been furnished to WEBB COUNTY by Contractor, as required by the Contract Documents; and
  4. a fully executed Contract has been delivered to Contractor (if required).
- 11.3.5. The failure of Contractor to execute the Contract (if required) and deliver the required Bonds and evidence of insurance within ten (10) days after the Contract is awarded, or as soon thereafter as WEBB COUNTY can assemble and deliver the Contract and by the time the WEBB COUNTY scheduled Pre-Construction meeting is held, shall, at WEBB COUNTY's option, constitute a

material breach of Contractor's bid proposal and WEBB COUNTY may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices for materials and labor and it being impracticable and difficult to determine accurately the amount of damages occurring to WEBB COUNTY by reason of Contractor's failure to execute the Contract within ten (10) days and deliver bonds and insurance by the WEBB COUNTY scheduled Pre-Construction meeting, the filing of a bid proposal shall constitute an acceptance of this Section 11.3.5. In the event WEBB COUNTY should re-advertise for bids, the defaulting Contractor shall not be eligible to bid and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this Section 11.3.

#### 11.4. 'UMBRELLA' LIABILITY INSURANCE

Contractor shall obtain, pay for and maintain Umbrella Liability Insurance during the Contract term, insuring Contractor for an amount of not less than \$4,000,000.00 per occurrence combined limit Bodily Injury (including death) and Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. WEBB COUNTY and Design Consultant shall be named as additional insureds using endorsement CG 20 26 or broader. In addition to the general aggregate the Umbrella Policy shall have a separate products/completed operation aggregate in the same amount as the occurrence limit. The Umbrella Liability Insurance policy shall provide "drop down" coverage, where the underlying primary insurance coverage limits are insufficient or exhausted.

#### 11.5. POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

11.5.1. Each insurance policy to be furnished by Contractor shall address the following required provisions within the certificate of insurance, which shall be reflected in the body of the insurance contract and/or by endorsement to the policy:

11.5.1.1. WEBB COUNTY and Design Consultant shall be named as additional insureds on all liability coverages, using endorsement CG 20 26 or broader. When WEBB COUNTY employs a Construction Manager on the Project, Contractor and Subcontractor(s) shall include the Construction Manager on all liability insurance policies to the same extent as WEBB COUNTY and Design Consultant are required to be named as additional insureds. The additional insured shall be on a primary and non-contributory basis.

11.5.1.2. Within five (5) calendar days of a suspension, cancellation, material change or non-renewal of any required line of insurance coverage, Contractor shall provide WEBB COUNTY a replacement certificate of insurance with all applicable endorsements included. WEBB COUNTY shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during the Contract.

11.5.1.3. The terms "Owner," or "WEBB COUNTY" shall include all

authorities, boards, bureaus, commissions, divisions, departments and offices of WEBB COUNTY and the individual members, employees and agents thereof in their official capacities, while acting on behalf of WEBB COUNTY.

- 11.5.1.4. The policy phrase or clause "Other Insurance" shall not apply to WEBB COUNTY where WEBB COUNTY is an additional insured on the policy. The required insurance coverage furnished by Contractor shall be the primary insurance for all purposes for the Project, as well as the primary and non-contributory insurance for the additional insureds named in the required policies.
- 11.5.1.5. All provisions of the Contract Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten with contractual liability coverage(s) sufficient to include such obligations with the applicable liability policies.
- 11.5.2. Concerning the insurance to be furnished by the Contractor, it is a condition precedent to acceptability which:
  - 11.5.2.1. All policies must comply with the applicable requirements and special provisions of this Article XI.
  - 11.5.2.2. Any policy evidenced by a Certificate of Insurance shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and WEBB COUNTY's decision regarding whether any policy contains such provisions and contrary to this requirement shall be final.
  - 11.5.2.3. All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that otherwise are acceptable to WEBB COUNTY.
- 11.5.3. Contractor agrees to the following special provisions:
  - 11.5.3.1. Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against WEBB COUNTY, it being the intention that the insurance policies shall protect the Parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this Article XI.
  - 11.5.3.2. Insurance companies issuing the insurance policies and Contractor shall have no recourse whatsoever against WEBB COUNTY for payment of any premiums or assessments for any

deductibles, as all such premiums and assessments solely are the responsibility and risk of Contractor.

- 11.5.3.3. Approval, disapproval or failure to act by WEBB COUNTY, regarding any insurance supplied by Contractor or any Subcontractor(s), shall not relieve Contractor of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by Contractor's insurance company shall likewise not exonerate or relieve Contractor from liability.
- 11.5.3.4. WEBB COUNTY reserves the right to review the insurance requirements of this Article XI during the effective period of this Contract and to adjust insurance coverage and insurance limits when deemed necessary and prudent by WEBB COUNTY's Risk Management Division, based upon changes in statutory law, court decisions or the claims history of Contractor and Subcontractors. Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either Party to this Contract or upon the underwriter of any such policy provisions. Upon request by WEBB COUNTY, Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage.
- 11.5.3.5. No special payments shall be made for any insurance policies that Contractor and Subcontractors are required to carry. Except as provided in Section 11.5.3.4 herein, all amounts payable regarding the insurance policies required under the Contract Documents are included in the Contract Sum.
- 11.5.3.6. Any insurance policies required under this Article XI may be written in combination with any of the other policies, where legally permitted, but none of the specified limits neither may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this Article XI be limited or circumvented by doing so.

## **ARTICLE XII. INSPECTING, UNCOVERING AND CORRECTING OF WORK**

### **121. INSPECTING WORK**

WEBB COUNTY and Design Consultant shall have authority to reject Work that does not conform to the Contract Documents. Whenever WEBB COUNTY or Design Consultant considers it necessary or advisable, WEBB COUNTY and/or Design Consultant shall have authority to require inspection or testing of the Work in accordance with this **Article XII**, whether or not such Work is fabricated, installed or completed.

### **122. UNCOVERING WORK**

Exhibit "D"

Webb County General Conditions  
Webb County HVAC Upgrades (JP Precinct 2, Place 2)

- 12.2.1. If a portion of the Work is covered, concealed and/or obstructed, contrary to WEBB COUNTY's or Design Consultant's requirements specifically expressed in the Contract Documents, it must be uncovered for WEBB COUNTY's or Design Consultant's inspection and properly be replaced at Contractor's expense without any change in the Contract Time or Sum.
- 12.2.2. If a portion of the Work has been covered, concealed and/or obstructed and Design Consultant or WEBB COUNTY has not inspected the Work prior to its being covered, concealed and/or obstructed, WEBB COUNTY and Design Consultant retain the right to inspect such Work and, when directed by WEBB COUNTY, Contractor shall uncover it. If said Work is found to be in accordance with the Contract Documents, the costs for uncovering and replacement shall, by appropriate Change Order, be paid by WEBB COUNTY. If such Work uncovered is found to not be in accordance with the Contract Documents, Contractor shall pay all costs associated with the uncovering, correction and replacement of the Work, unless the condition found was caused by WEBB COUNTY or WEBB COUNTY's separate contractor, in which event WEBB COUNTY shall be responsible for payment of actual costs incurred by Contractor.

123. CORRECTING WORK

- 12.3.1. Contractor promptly shall correct any Work rejected by WEBB COUNTY or Design Consultant as failing to conform to the requirements of the Contract Documents, whether inspected before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear costs of correcting such rejected Work, along with all costs for additional testing, inspections and compensation for Design Consultant's services and expenses made necessary thereby.
- 12.3.2. In addition to Contractor's warranty obligations, if any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, including, but not limited to these General Conditions, Contractor shall correct it promptly after receipt of written notice from WEBB COUNTY or Design Consultant to correct unless WEBB COUNTY previously has given Contractor a written acceptance or waiver of the defect or nonconformity. Contractor's obligation to correct defective or nonconforming Work remains in effect for:

12.3.2.1 one (1) year after the date of Substantial Completion of the Work or designated portion of the Work;

12.3.2.2 one (1) year after the date for commencement of warranties established by agreement in connection with partial occupancy under **Section 9.8.1** hereto; or

12.3.2.3 the stipulated duration of any applicable special warranty

required by the Contract Documents.

- 12.3.3. The one (1) year period, described in **Section 12.3.2.1**, **Section 12.3.2.2** and **Section 12.3.2.3** herein, shall be extended, with respect to portions of the Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual completion of the Work.
- 12.3.4. The obligations of Contractor under **Section 3.5** herein and this **Section 12.3** shall survive final acceptance of the Work and termination of this Contract. WEBB COUNTY shall give notice to Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one (1) year period stated in this **Section 12.3** does not limit the ability of WEBB COUNTY to require Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by WEBB COUNTY or Design Consultant at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion. The one (1) year period also does not relieve Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one (1) year correction period.
- 12.3.5. Contractor shall remove from the Project Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by WEBB COUNTY.
- 12.3.6. If Contractor fails to correct any defective or nonconforming Work within what WEBB COUNTY deems a reasonable time after WEBB COUNTY or Design Consultant gives written notice of rejection to Contractor, WEBB COUNTY may correct the defective or nonconforming Work in accordance with this **Section 12.3**. If Contractor promptly does not proceed with correction of any defective or nonconforming Work within a reasonable time fixed by written notice from WEBB COUNTY or Design Consultant, WEBB COUNTY may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If Contractor does not pay the costs of removal and storage within ten (10) calendar days after written notice by WEBB COUNTY or Design Consultant, WEBB COUNTY may, upon ten (10) additional calendar days written notice, sell the materials and equipment at auction or at private sale and shall account to Contractor for the proceeds, after deducting all costs and damages that should have been borne by Contractor to correct the defective work, including all compensation for Design Consultant's services and expenses made necessary as a result of the sale, removal and storage. If the proceeds of sale do not cover the costs that Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to Contractor then or thereafter are not sufficient to cover the deficiency, Contractor shall pay the difference to WEBB COUNTY.
- 12.3.7. Contractor shall bear the cost of correcting destroyed or damaged construction of WEBB COUNTY or WEBB COUNTY's separate contractors, whether the



construction is completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.3.8. Nothing contained in this **Section 12.3** shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. The establishment of the one (1) year time period, as described in **Section 12.3.2** relates only to the specific obligation of Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

12.3.9. Any Work repaired or replaced, pursuant to this **Article XII**, shall be subject to the provisions of **Article XII** to the same extent as Work originally performed or installed.

#### 124. ACCEPTANCE OF NONCONFORMING WORK

WEBB COUNTY may, in WEBB COUNTY's sole discretion, accept Work that is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction. Upon that occurrence, the Contract Sum shall be reduced as appropriate and equitable, as solely determined by WEBB COUNTY. Any adjustment shall be accomplished whether or not final payment has been made.

### **ARTICLE XIII. COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION**

#### 13.1. FINAL COMPLETION OF CONTRACT

The Contract shall be considered completed, except as provided in any warranty or maintenance stipulations, bond or by law, when all the Work has been finally completed, a final inspection is made by WEBB COUNTY and Design Consultant and final acceptance and final payment is made by WEBB COUNTY.

#### 13.2. WARRANTY FULFILLMENT

Prior to the expiration of the specified warranty period provided for in the Contract Documents, WEBB COUNTY or Design Consultant shall make a detailed inspection of the Work and shall advise Contractor and Contractor's Surety of the items that require correction. WEBB COUNTY or Design Consultant shall make a subsequent inspection and, if the corrections have been properly performed, WEBB COUNTY shall issue a letter of release on the maintenance obligations to Contractor. If, for any reason, Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have properly been performed and a letter of release from WEBB COUNTY to Contractor is issued.

13.3. TERMINATION BY WEBB COUNTY FOR CAUSE

133.1. Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by WEBB COUNTY for any good cause after giving seven (7) calendar days advance written notice and an opportunity to cure to Contractor, including but not limited to the following causes:

13.3.1.1. Failure or refusal of Contractor to start the Work within ten (10) calendar days after the date of the written Notice to Proceed is issued by WEBB COUNTY to Contractor commence Work.

13.3.1.2. A reasonable belief of WEBB COUNTY or Design Consultant that the progress of the Work being made by Contractor is insufficient to complete the Work within the specified Contract time.

13.3.1.3. Failure or refusal of Contractor to provide sufficient and proper equipment or construction forces properly to execute the Work in a timely manner.

13.3.1.4. A reasonable belief Contractor has abandoned the Work.

13.3.1.5. A reasonable belief Contractor has become insolvent, bankrupt, or otherwise is financially unable to carry on the Work.

13.3.1.6. Failure or refusal on the part of Contractor to observe any material requirements of the Contract Documents or to comply with any written orders given by WEBB COUNTY or Design Consultant, as provided for in the Contract Documents.

13.3.1.7. Failure or refusal of Contractor promptly to correct any defects in materials or workmanship, or defects of any nature, the correction of which has been directed to Contractor in writing by WEBB COUNTY or Design Consultant.

13.3.1.8. A reasonable belief by WEBB COUNTY collusion exists or has occurred for the purpose of illegally procuring the contract or a Subcontractor, or that a fraud is being perpetrated on WEBB COUNTY in connection with the construction of Work under the Contract.

13.3.1.9. Repeated and flagrant violation of safe working procedures.

1332. When the Work or any portion of the Work is terminated for any of the causes itemized in Section 13.3.1 herein, or for any other cause except termination for convenience pursuant to Section 13.3.6 herein, Contractor shall, as of the date specified by WEBB COUNTY, immediately discontinue the Work or portion of the Work as WEBB COUNTY shall designate, whereupon the Surety shall, within fifteen (15) calendar days after the written Notice of Termination by WEBB COUNTY For Cause has been served upon Contractor and the Surety or its authorized agents, assume the obligations of Contractor for the Work or

that portion of the Work which WEBB COUNTY has ordered Contractor to discontinue and Surety may:

- 13.3.2.1. perform the Work with forces employed by the surety;
- 13.3.2.2. with the written consent of WEBB COUNTY, tender a replacement Contractor to take over and perform the Work, in which event the Surety shall be responsible for and pay the amount of any costs required to be incurred or the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or
- 13.3.2.3. with the written consent of WEBB COUNTY, tender and pay to WEBB COUNTY in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming work and compensate WEBB COUNTY for any other loss sustained as a result of Contractor's default.

In the event of Termination by WEBB COUNTY For Cause involving Article 13.3.2.1 and/or Article 13.3.2.2, the Surety shall assume Contractor's place in all respects and the amount of funds remaining and unpaid under the Contract shall be paid by WEBB COUNTY for all Work performed by the Surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of WEBB COUNTY to deduct any and all costs, damages (liquidated or actual) WEBB COUNTY incurred including, but not limited to, any and all additional fees and expenses of Design Consultant and any attorneys' fees WEBB COUNTY incurs as a result of Contractor's default and subsequent termination.

1333. The balance of the Contract Sum remaining at the time of Contractor's default and subsequent termination shall become due and payable to the Surety as the Work progresses, subject to all of the terms, covenants and conditions of the Contract Documents. If the Surety does not, within the time specified in Section 13.3.2 herein, exercise its obligation to assume the obligations of the Contract, or that portion of the Work which WEBB COUNTY has ordered Contractor to discontinue, then WEBB COUNTY shall have the power to complete the Work by contract or otherwise, as WEBB COUNTY may deem necessary and elect. Contractor agrees that WEBB COUNTY shall have the right to:

- 1. take possession of or use any or all of the materials, plant, tools, equipment, supplies and property of every kind, to be provided by Contractor for the purpose of the Work; and
- 2. procure other tools, equipment, labor and materials for the completion of the Work at Contractor's expense; and
- 3. charge to the account of Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses.

1334. All expenses incurred by WEBB COUNTY to complete the Work shall be deducted by WEBB COUNTY out of the balance of the Contract Sum

remaining unpaid to or unearned by Contractor. Contractor and the Surety shall be liable to WEBB COUNTY for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including, but not limited to, additional fees of Design Consultant and attorney's fees) and liquidated or actual damages incurred as a result of the termination.

1335. WEBB COUNTY shall not be required to obtain the lowest bid for the Work of completing the Contract, as described in Section 13.3.3 herein, but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and the other damages, as provided in Section 13.3.3 herein. In case WEBB COUNTY's costs and damages are less than the sum which would have been payable under the Contract if the Work had been completed by Contractor pursuant to the Contract, then WEBB COUNTY may pay Contractor (or the Surety, in the event of a complete Termination by WEBB COUNTY For Cause) the difference, provided that Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such costs for completion and damages shall exceed the amount which would have been payable under the Contract if the Work had been completed by Contractor pursuant to the Contract, then Contractor and its Surety shall pay the amount of the excess to WEBB COUNTY immediately upon written notice from WEBB COUNTY to Contractor and/or the Surety for the excess amount owed. When only a particular part of the Work is being carried on by WEBB COUNTY, by contract or otherwise under the provisions of this Section, Contractor shall continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workers employed and provided by WEBB COUNTY.

1336. The right to terminate this Contract for the convenience of WEBB COUNTY (including, but not limited to, non-appropriation of funding) expressly is retained by WEBB COUNTY. In the event of a termination for convenience by WEBB COUNTY, WEBB COUNTY shall, at least ten (10) calendar days in advance, deliver written notice of the termination for convenience to Contractor. Upon Contractor's receipt of such written notice, Contractor immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Contractor shall then be paid by WEBB COUNTY, in accordance with the terms and provisions of the Contract Documents, an amount not to exceed the actual labor costs incurred, the actual cost of all materials installed and the actual cost of all materials stored at the Project site or away from the Project site, as approved in writing by WEBB COUNTY but not yet paid for and which cannot be returned, plus applicable overhead, profit, and actual, reasonable and documented termination costs, if any, paid by Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents up to the date of termination for convenience, less all amounts previously paid for the Work. No amount ever shall be paid to Contractor for lost or anticipated profits on any part of the Work not performed.

13.4. TEMPORARY SUSPENSION OF THE WORK

13.4.1. The Work or any portion of the Work may temporarily be suspended by WEBB COUNTY, for a time period not to exceed ninety (90) calendar days, immediately upon written notice to Contractor for any reason, including, but not limited to:

- 13.4.1.1. the causes described in **Section 13.3.1.1** through **Section 13.3.1.9** herein;
- 13.4.1.2. under other provisions in the Contract Documents that require or permit temporary suspension of the Work;
- 13.4.1.3. situations where the Work is threatened by, contributes to or causes an immediate threat to public health, safety, or security; or
- 13.4.1.4. other unforeseen conditions or circumstances.

13.4.2. Contractor immediately shall resume the temporarily suspended Work when ordered in writing to do so by WEBB COUNTY. WEBB COUNTY shall not, under any circumstances, be liable for any claim of Contractor arising from a temporary suspension due to a cause described in **Section 13.4.1** herein; provided, however, that in the case of a temporary suspension for any of the reasons described under **Section 13.4.1.2** through **Section 13.4.1.4** herein, where Contractor is not a contributing cause of the suspension or where the provision of the Contract Documents in question does not specifically provide that the suspension is at no cost to WEBB COUNTY, WEBB COUNTY shall make an equitable adjustment for the following items, provided that a claim properly is made by Contractor under **Section 4.3** herein:

- 13.4.2.1. an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension, as determined by WEBB COUNTY and Design Consultant;
- 13.4.2.2. an equitable adjustment to the Contract Sum for the actual, necessary and reasonable costs of properly protecting any Work finished or partially finished during the period of the temporary suspension; provided, however, that no payment of profit and/or overhead shall be allowed on top of these costs; and
- 13.4.2.3. if it becomes necessary to move equipment from the Project Site and then return it to the Project Site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary and reasonable cost of these moves; provided, however, that no adjustment to the Contract Sum shall be due if said equipment is moved to another Project site of WEBB COUNTY.